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THE PRINCIPLE OF NON-INTERVENTION: A VIEW THROUGH THE CASE OF NICARAGUA V. THE UNITED STATES OF AMERICA (1984 – 1986)

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> "If mankind in its international relations has signally failed to achieve the rational good, it must either have been too stupid to understand that good or too wicked to pursue it."[1]
>
> E.H. Carr

[1] Carr, Edward Hallett, The Twenty Years' Crisis 1919 – 1939 [London, Macmillan and Co., 1942], pg. 51

INTRODUCTION

This thesis explores the principle of non-intervention of international law through a critical analysis of the judgements of the International Court of Justice (ICJ) on the intervention of the United States in Nicaragua in the 1980s. The critical analysis traces the line of argumentation followed by the Court, focusing on the arguments about the right of collective self-defence and the right to resort to counter-measures. Then, it analyses the behaviour of the parties and their motives, in order to obtain a wider perspective of the case, and its relation with the principle of non-intervention.

The judgement of the International Court of Justice (ICJ) on the intervention of the United States in Nicaragua is a landmark in both international law and the study of illegal interventions, as it clarified the meaning and status of the principles of non-intervention and non-use of force.[2] Also, it was the first time that an international tribunal took on the task of examining the US foreign policies in the light of international law.

The decisions of the ICJ can be approached formally or substantively. The judgement of 26 November 1984, for instance, has to do with the jurisdiction of the Court and the admissibility of the application of Nicaragua. Although these formal matters were pivotal in establishing the grounds for the Court's jurisdiction and the admissibility of Nicaragua's lawsuit, we will only go through them briefly, as they draw primarily on procedural aspects that are not the main concern of this paper. Special attention will be thus given to the judgment of 27 June 1986, which dealt with the merits of the case or matters of substance.

[2] Hilarie, Max, International Law and the United States Military Intervention in the Western Hemisphere, [The Hague, Klwer Law International, 1997] pg. 19

Principle of non-intervention – an overview

The first writer to state the principle explicitly was Christian Wolff in the year 1748.[3] The tenet was formulated as a negative concept, that of *non*-intervention. But what is understood by *intervention* as a positive notion? Intervention has been defined as a "dictatorial or coercive interference, by an outside party or parties, in the sphere of jurisdiction of a sovereign State, or more broadly of an independent political community."[4]

This definition contains several elements. The expression "**dictatorial or coercive**" implies that the intervener is usually superior in power than the intervened. The **interference** can be: direct, when performed by the intervener himself, or indirect, when an agent or proxy is used to carry it out; open, when undertaken with no secrecy, or clandestine, when the instruments employed are under the control of secret intelligence agencies; forcible, when it purports to the use of force, or non-forcible, when it takes the form of economic or diplomatic sanctions. The **outside party or parties** may be a State, a group of States, an international organization, a business corporation, or even a political party. And finally, the **sovereign jurisdiction** can be territorial, over the State's citizens, or over its right to determine its internal or external affairs.

The core of the rule of non-intervention is the right of States to independence and sovereignty, and their equality in rights, no matter their size, status, or political ideology. Any dictatorial or coercive intervention is hence generally seen as legally and morally wrong.[5] The normative on non-intervention seeks to provide an acceptable balance between sovereignty of States and the interdependence of today's world.[6]

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[3] Wolff, Christian, *Jus Gentium Methodo Scientifica Pertractatum* Trans. Joseph Drake, [Oxford, Clarendon Press, 1934], §2, in http://www.iep.utm.edu/i/interven.htm

[4] Bull, Hedley, Intervention in World Politics, [London, Oxford University Press, 1984]

[5] According to Paul Ramsey, the central issue in determining the morality of a particular intervention is whether it serves justice or not. Instead, for Michael Walzer the criterion should be determined by the protection of territorial integrity and political sovereignty of all States. See Johnson, James, "Morality and Contemporary Warfare", in http://religion.rutgers.edu/courses/347/readings/intervention.html and Johnson James, "Thinking Morally about Intervention", in http://www.pacem.no/1999/2/intervensjon/johnson/

[6] Higgins Rosalyn, "Intervention and International Law", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984] pg. 30

Although acts aimed at influencing the domestic affairs of another State are illegitimate,[7] it is rather difficult to determine the lawfulness or unlawfulness of intervention in the abstract. While military interventions that do not abide by the parameters established in the United Nations Charter are blatantly illegal, there are other kinds of interventions in which the picture is less clear.

Some authors contend that the post-1945 period has been one of increased forcible interventions. Yet, as Hedley Bull asserts, what has increased is not the incidence or scale of interventions, but our perception of them as such. The establishment of the principle of non-intervention as one of the pillars of international law has played an essential role in this change of perception. The changes reflected in the political organs of the UN also constitute "an important index of the shift that has taken place in the normative climate of intervention."[8]

Article 2 of the UN Charter forbids the use of force against the territorial integrity or political independence of any State, as well as interventions in matters which are essentially within their domestic jurisdiction.[9] Article 2-7 establishes:

> "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter…"

However, the principle admits an exception: the application of enforcement measures under Chapter VII to maintain or restore international peace and security. Thus, while the use of armed force against the territorial integrity or political independence of States is generally prohibited, intervention is justifiable in certain cases: on the grounds of self-defence; upon invitation of the intervened;[10] when it is done to assist a State to repel another intervention, also known as *counter-intervention*; when it is collectively authorized by the international

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[7] Hoffman, Stanley, "The Problem of Intervention", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984] pg. 11
[8] Op. Cit. Bull, pg. 149
[9] UN Charter, Article 2 - 7
[10] In this sense, "a state's freedom to invite other states to undertake tasks within its sphere of jurisdiction is, indeed, an aspect of its sovereignty." Op. Cit. Bull pg. 190

community itself through an international organization;[11] and when intervention is carried out for humanitarian reasons, commonly known as humanitarian intervention.[12]

According to some authors, the UN Charter is not satisfactory in its way of dealing with intervention, for it considers only certain types of actions, neglecting other forms of abusive interference. Additionally, Article 2-7 of the UN Charter prohibits intervention to the United Nations as a collective institution, but leaves a void when States are individually considered.

With respect to the first issue, the Charter certainly bans the use of force and the threat of the use of force, but remains silent about more frequent types of intervention, such as the attempt to change the nature of a government, or to determine the outcome of a civil war. For this reason, Stanley Hoffman contends that the UN Charter is "based on a model which draws a sharp distinction between external and domestic affairs; the evil against which it is supposed to operate is the massive crossing of established borders by armies; and that has not been the main problem of post-war international relations."[13] The ICJ, however, does not consider this issue as a problem. In its viewpoint, "it was never intended that the Charter should embody written confirmation of every essential principle of international law in force. The existence in the *opinio juris*[14] of States of the principle of non-intervention is backed by established and substantial practice."[15] Bull agrees with this stance as, for him, a loose set of moral and political precepts, principles and precedents allow measuring the degree of legitimacy of a particular intervention.

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[11] In regards to collective intervention, Evan Luard says: "Collective intervention (...) is by definition intervention that has been authorized by some international body having widespread legitimacy (...). Intervention by such an organization, duly authorized, is widely seen as proper, even desirable." Luard, Evan, "Collective Intervention", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984] pg. 157

[12] Humanitarian interventions have become very problematic under the actual circumstances, because "it is hard to know whether an intervention which starts as a humanitarian move does not later become self-serving." Op. Cit. Hoffman, pg 24

[13] Ibid, pg. 21

[14] The latin expression *opinio juris* refers to the commonly shared opinion that a customary rule is binding for all States. In the Court's words, *opinio juris* is the "evidence of a belief that this practice is rendered obligatory by the existence of a rule requiring it. The need for such a belief, i.e., the existence of a subjective element, is implicit in the very notion of the *opinio juris sive necesitatis*." Decision of the ICJ of 27 June 1986, Case Concerning Military and Paramilitary Activities in and against Nicaragua, pg. 109

[15] Ibid, pg. 106

With regards to the second problem, the void left by the Charter concerning States being individually considered was resolved by later instruments of international law. The UN Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)[16] established that "[a]ll States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, **non-interference in the internal affairs of all States**, and respect for the sovereign rights of all peoples and their territorial integrity."[17]

In the same manner, the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty (1965), and the Declaration on Principles of International Law, Friendly Relations and Cooperation (1970) set out principles that were declared as the "basic principles" of international law. According to the former,

> "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind. Also, **no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State.**"[18]

This text was reproduced in the Declaration on Principles of International Law, and accordingly the use of force constitutes a violation of international law. Therefore "States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State."[19] In addition, the Declaration proclaims that

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[16] See the Declaration on the Granting of Independence to Colonial Countries and Peoples, in http://www.unhchr.ch/html/menu3/b/c_coloni.htm

[17] Declaration on the Granting of Independence to Colonial Countries and Peoples, Article 7. The highlight is ours.

[18] Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, in http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/218/94/IMG/NR021894.pdf?OpenElement. Highlight is ours.

[19] Declaration on Principles of International Law, Friendly Relations and Cooperation http://www.hku.edu/law/conlawhk/conlaw/outline/Outline4/2625.htm

every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State.[20]

Despite the prohibition of intervention in various declarations, conventions and resolutions, its practice has been conspicuous in international relations.[21] However, as Hedley Bull notes, our perception of it as unlawful has become more acute. This has been reflected in the values and standards of behaviour consecrated in international law by the "international society". Respect for that society and the individuality of each one of its members, is precisely what is behind the topic of non-intervention, and is, ultimately, what this thesis will seek to endorse.

Delimitation of the topic

There are many kinds of interventions (humanitarian intervention, intervention in self-defence, military intervention, economic or diplomatic sanctions, etc.), and each of them has an associated debate of its own. The paper will concentrate on intervention involving the use of force, with the objective of manipulating the outcome of an internal conflict of another State. The "use of force", as forbidden by the UN Charter, targets the use of armed force through military or paramilitary actions against another State.[22] The paper will draw on issues related to the principle of non-use of force that have a direct impact on the arguments on non-intervention.

[20] Ibid

[21] See Gurtov, Melvin, The United States against the Third World, Antinationalism and Intervention, [New York, Praeger Publishers, 1974]. In the case of the United States, One only has to recall Eisenhower's policies in the Middle East, Kennedy's in Africa, Johnson's in Latin America and Asia, Nixon's in Asia, Reagan's in Central America, Clinton's in the Middle East, Africa and the Balkans, and Bush father and son in, again, the Middle East. See Ibid, and Johnson, Loch K., Secret Agencies, U.S. Intelligence in a Hostile World, [New York, Yale University Press, 1996]

[22] See Clark Arendt, Anthony, "International Law and the Preemptive Use of Military Force", in http://www.twq.com/03spring/docs/03spring_arend.pdf. See also Díaz Barrado, Castor Miguel, "La Prohibición del Uso de la Fuerza en el Derecho Internacional Contemporáneo. Un caso práctico: la Operación Armada de los Estados Unidos de América en la República Árabe de Libia. Abril de 1986", in http://dialnet.unirioja.es/servlet/oaiart?codigo=124632

Methodology

This paper will consist of a critical analysis of the judgements of the ICJ concerning the case of Nicaragua v. the United States, and the behaviour and motives of the parties involved. Critical analysis here provides a method that focuses on the strengths, weaknesses, and context of argumentation. The word "critical" entails an evaluation or subjective appraisal of the argument. The word "analysis" represents the breaking down or study of its parts. In this regard, a critical analysis thus considers the claims of theorists, academics, governments, jurists, etc. on a certain topic, seeking to determine their basis, and the extent to which they apply to a given situation.

Through the evaluation of primary and secondary literature, we will break down the arguments to find their logic, and determine the influence of historical events and political contexts in the parties' decisions. The method will provide a better understanding of the case, and will help to conclude on its coherency, relevance, and applicability.

The thesis will be divided into two parts. Part one will concentrate on the primary sources, that is, the judgments of the ICJ. Through a careful and thorough reading, it will bring about the logic of the Court's reasoning, and the necessity of its conclusions. The claims of the Court will be critically assessed, splitting them up into their component parts (main premise, minor premise and conclusion), with the purpose of establishing the strengths and weaknesses of the argumentation. Understandably, Part one will draw on juridical aspects, as the objects of study are the judgements themselves. The analysis will trace the substantive arguments behind the procedural explanations and factual descriptions – as the core line of reasoning of the ICJ is dispersed throughout the judgments – and will determine their internal coherence.

The arguments in this part will be twofold: on the one hand, the paper will examine the dismissal of the justification of collective self-defence, and how this led the Court to conclude that the principle of non-use of force had been infringed by the United States. On the other, it will assess the dismissal of the justification of the right to take counter-measures, and how this entailed the violation of the principle of non-intervention.

Part two will deal with the political aspects of the case, through an interdisciplinary approach combining historical antecedents, international law, and international relations theory. The parties' behaviour and their motives will be appraised, using primary and secondary literature.

The criteria of judgment underlying the study are the following: are the Court's arguments incontestable, or do they, on the contrary, show flaws and shortcomings? If so, do the flaws undermine the legitimacy and validity of the judgements? Are the arguments used to rule the Nicaragua case obsolete? Is the illegality of intervention determined by the absence of justifying arguments? Are the doctrines that inform US foreign policy compatible with international law? What was the real motivation behind the actions of the United States, Nicaragua, Honduras, Costa Rica and El Salvador? Does the recurring disrespect of the rule of non-intervention imply that the customary rule has changed, and so must the system?

Responses to possible objections

The topic of the thesis might face some objections worth addressing in advance, in order to circumvent the readers' veto. Firstly, talking about the principle of non-intervention in the actual circumstances of world politics might seem like a mockery, as we witness numerous interventions in the internal affairs of weaker States with all kinds of excuses. As Phillip Windsor puts it, "a general assumption persists of a world so dominated, indeed permeated, by sheer power that it becomes almost futile to discuss the question of intervention by the superpowers..."[23] But perhaps, even though violations to the non-interventionist rule are indeed evident and manifest, compliance with it passes unnoticed. Surely, if the principle did not exist in customary international law, intromissions in other States' affairs would be much more frequent. As long as the rule remains valid, only powerful States can afford to interfere in weaker States.

[23] Windsor, Philip, "Superpower Intervention", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984], pg.45

In addition, exploring the issue of non-intervention is, in the same way as the analysis of any moral principle, never obsolete. Although intervention has been conspicuous throughout modern history, this does not take from the fact that there is a need to find out whether the foundations of international law survive as principles, or whether they have changed, providing impetus for the law to change as well.

Some might pose a second and more profound objection that casts doubts over the very heart of international law itself. International legislation is the result of the consensus reached by international actors on the norms that should direct their relations. The fact that there is no supranational authority that can enforce international law has led many lawyers and theorists to question its juridical character,[24] arguing that international law cannot be classified as a proper system of law. If this is the case, it is legitimate to ask: what is the real relevance and applicability of international law and its institutions, the ICJ being one of them? Are they really operative, or are they just a decorative figure in the landscape of international relations?

H.L.A. Hart postulates a strong argument in support of the juridical and, therefore, compulsory character of international law. He explains that a system of law is not only composed of primary rules, or norms supported by threats of sanctions, but also of secondary rules, like the norms that grant the faculty to create, modify or terminate duties and obligations. Wherever there are juridical rules, be they primary, secondary, or both, there is a legal system that makes conduct compulsory.[25] The lack of a unified system of sanctions does not entail the invalidity of international law; it only denotes that international law is constituted mainly by secondary rules. The juridical character of international law is supported by the fact that sovereign political entities are bound by superior constraining rules, which must be obeyed if their purpose is to create legal obligations.

Hans Kelsen also argued in favour of the classification of international law as "law", stating that international law is such, precisely because it authorises counter-intervention, that is, that the victim of an unlawful act takes justice into its own hands. Thus, "[f]ear of being exposed

[24] Hart, H.L.A., "International Law", in The Concept of Law, [Oxford, Oxford University Press, 1994]
[25] Hart, H.L.A., El Concepto de Derecho, [Buenos Aires, Ed. Abeledo Perrot, 1995] pg. 102

to counter-measures may act as a powerful inducement to abide by commitments undertaken by States."[26]

An additional argument in favour of compliance with international law is based on its moral character. Gordon Graham expressed it in these words: "international law deserves the respect of those subject to it, not because they can be forced to obey it, but because it embodies the moral rights of nations."[27] Indeed, the moral content of international law, which is clear and apparent, constitutes a strong argument in favour of the binding nature of international rules. However, this argument is highly debatable and far from convincing for positivists and realists. Hence, it is important to stress that there are norms, such as those regulating territorial issues or procedural matters, which do not involve any moral content, and must nevertheless be obeyed by international actors. The binding nature of these norms is independent from their moral character.

Thirdly, it is possible to contend that the case study is only applicable within the bipolar context of the Cold War. Notwithstanding, the answer to this contention is straightforward: the arguments used to rule the Nicaragua case have permanent validity, because they are based on customary international rules that have remained the same since the Cold War. The treaty-law invoked constitutes the backbone of the current international law and inter-American relations, i.e., the United Nations Charter and the Charter of the Organization of American States, and the judgments served to clarify them. In addition, the doctrines and values that have inspired US foreign policy for years are still adduced today to justify interventions around the globe. Hence, although the political background has certainly changed, the grounds to carry out interventions (i.e. the protection of the national interest, the need to spread democracy, the need to protect freedom everywhere) remain the same. The topic is therefore important, useful, and up to date.

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[26] Tomuschat, Christian, "Are counter-measures subject to prior recourse to dispute settlement procedures?", European Journal of International law, in http://www.ejil.org/journal/Vol5/No1/art8.pdf

[27] Graham, Gordon, Ethics and International Relations, [Blackwell Publishers, Oxford, 1997], pg. 95. Counter-measures, a central argument in the Nicaragua case, constitute an exception to the principle of non-intervention. They are actions taken in response to an initial wrongful act by another State. If the wrongful act does not exist, the measures taken as a supposed retaliation purport an infringement of the customary rule of non-intervention.

Structure of the thesis

With these basic premises in mind, the structure of the paper will be the following: Part I will study the judgments, drawing on juridical aspects of the case that are indispensable for a better understanding of the Court's reasoning. It will comprise three chapters: Chapter I will briefly go through the historical context and the facts of the case; Chapter II will concentrate on the analysis of the arguments used by the Court to dismiss US allegations i.e. the exercise of the right of collective self defence, the lack of an armed attack by Nicaragua against its neighbours, and the possibility to justify US actions based on the right to take counter-measures; and finally, Chapter III will make some comments on the judgment of 27 June 1986, particularly with regards to the concept of "armed attack" and the right to resort to counter-measures.

Part II will assess the behaviour of the parties and their motives under a more political scope, to finally draw corresponding conclusions.

PART I
- THE JUDGEMENTS -

Generally speaking, the judgements of the ICJ are critical in the development of international law. The Court's decisions really influence the attitude of States towards other international actors, and they clarify the notions and principles that guide international relations.

The role of the ICJ has its origins in the first Permanent Court of Arbitration created in The Hague Peace Convention of 1899.[28] Later on, the League of Nations brought into being the Permanent Court of International Justice (PCIJ), to hear and determine disputes of international character, and to give advisory opinions upon any dispute or question referred to it by the Council or the Assembly. After the Second World War, the San Francisco Conference (1945) decided in favour of the creation of an entirely new court, the International Court of Justice (ICJ), which would be the principal judicial organ of the United Nations (UN). The Statute of the ICJ forms an integral part of the UN Charter. Hence, "by signing the Charter, a State Member of the United Nations undertakes to comply with any decision of the International Court of Justice in a case to which it is a party."[29]

The ICJ works as a "world court" to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes that might lead to a breach of the peace (Article 1 UN Charter). The jurisdiction of the Court comprises all cases referred to it by the parties, and all matters specially provided for in the UN Charter or in treaties and conventions in force.[30] Thus, the ICJ is competent to solve disputes between States that have made a "special agreement" to recognize the ICJ's jurisdiction over that particular case, or conflicts where no previous agreement has been made.

In this case, States may declare they recognize as compulsory *ipso facto* the jurisdiction of the Court, in relation to any other State accepting the same obligation, in legal disputes concerning

[28] See General Information on the ICJ in http://www.icj-cij.org/icjwww/igeneralinformation/ibleubook.pdf
[29] Ibid, pg. 75
[30] Statute of the International Court of Justice, in http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm#CHAPTER_II

the following: the interpretation of a treaty; any question of international law; the existence of any fact which, if established, would constitute a breach of an international obligation; the nature or extent of the reparation to be made for the breach of an international obligation. States can have reservations to the acceptances of the compulsory jurisdiction. The judgements of the Court are binding, final and without appeal as far as the parties to the case are concerned.

Although the principle of *stare decisis*, whereby courts are bound by precedents, does not apply in international law, the ICJ maintains a certain consistency in its decisions. This enables it to influence the attitude of States towards questions that have already been dealt with, thus deriving guidance from the principles laid down by its judgements.[31] For this reason, "a judgement of the Court does not simply decide a particular dispute, but inevitably also contributes to the development of international law."[32] There lies the importance of the ICJ's decisions, and the reason why these particular judgements have been chosen as objects of study in this paper.

[31] Ibid, pg. 76
[32] Ibid

Chapter I
- Facts of the case concerning military and paramilitary activities in and against Nicaragua -

Historical context

The intervention of the United States in Nicaragua took place under the bipolar structure of the Cold War, characterized by the ideological contest between capitalism and communism. The Brezhnev doctrine legitimized intervention so long as fundamental communist principles were at stake.[33] The United States, on the other hand, claimed a right to intervene in order to protect other countries from the threat of communism. The two countries capable of waging a nuclear war were forced to ensure that conflicts taking place around the world would not lead to an all-out confrontation between East and West.[34]

In this context, revolutionary struggles became a critical arena, because they appeared to have a direct impact on regional and global power balances.[35] Thus, while the Soviet Union tried to spread communist ideals in weak new emerging nations, the United States strived to protect those regimes against the "predatory effects of communist-inspired and supported guerrilla warfare".[36] The endorsement of counter-insurgency policies was one of the tools used for this purpose. Communism was not only philosophically hostile to US ideology, but also detrimental to its national interests.

After the failure in Vietnam, the United States retreated from counter-insurgency activism. Nixon declared the United States would give sympathy and support to those fighting against communism, but would henceforth abstain from providing combatants. Nevertheless, the

[33] Op. Cit. pg. 55
[34] Ibid, pg. 51
[35] Morgenthau, Hans, "To Intervene or not to Intervene", in http://dss.ucsd.edu/~bslantch/courses/nss/documents/morgenthau-to-intervene.pdf
[36] Op. Cit Hoffman, pg. 120

revolutionary developments of the 1970s[37] revived the interventionary approach to political struggles taking place in strategic regions of the world, such as the Middle East and Central America. This political climate led the United States to revisit the Monroe Doctrine, "America for the Americans", engaging in several interventions in places such as Nicaragua, Guatemala (1954), Cuba (1961), the Dominican Republic (1965), Chile (1973), and Grenada (1983).

The case in point is unique because, unlike in other countries, Nicaragua was able to circumvent the US veto in the Security Council, as well as its influence in the Organization of American States (OAS), by referring the dispute directly to the ICJ. The case raised fundamental questions of both law and politics, particularly with regards to the principles of non-intervention and non-use of force. Also, for the first time, US foreign policy and its relationship to Latin America were examined by an international tribunal.

Developments in Nicaragua

The United States supported 42 years of dictatorship of the right-wing Somoza family in Nicaragua. The abuses committed by the Somozas [38] led to the Sandinista[39] revolution, which ended up with the victory of the Frente Sandinista de Liberación Nacional[40] (FSLN) in 1979. When the Sandinista revolutionary forces overthrew Dictator Anastasio Somoza Debayle,[41] the Organization of American States (OAS) adopted a resolution declaring the need for the immediate and definitive replacement of the Somoza regime, the installation of a democratic

[37] For instance, the dispatch of Cuban troops to Angola and Ethiopia to consolidate Marxist-Leninist victories, the revolutions in Iran and Nicaragua, and the entry of Soviet troops into Afghanistan to repress the anti-regime uprising.

[38] Anastasio Somoza Garcia had himself fraudulently elected president in 1937. He ruled as dictator for the next 20 years, sometimes as president, sometimes behind a puppet president. He was assassinated in 1956. His elder son Luis replaced him until his death in 1967, when the younger son, Anastasio Somoza Debayle, assumed the presidency. In http://berclo.net/page01/01en-nicaragua.html It was well known that, referring to the first General Somoza and his installation in power in 1933, an officer of President Franklin Roosevelt's administration said: "He may be a son of a bitch, but he's *our* son of a bitch!". Reichler Paul S., "Holding America to its own best standards: Abe Chayes and Nicaragua in the World Court", in http://www.fhe.com/

[39] The word Sandinista comes from Augusto Nicolás Calderón Sandino, better known as Augusto César Sandino. Born in 1895 in a small village in Nicaragua, he became a leftist revolutionary, who fought against the United States' interventions in Nicaragua from 1856 onwards. He was killed by members of the National Guard of Dictator Anastasio Somoza García on 21 February 1934.

[40] In English, Sandinist National Liberation Front.

[41] See "Nicaragua: una historia tormentosa", in http://www.nodo50.org/espanica/histonica.html#somozas

government, and the holding of free elections in Nicaragua. The FSLN installed a Junta of National Reconstruction, and an 18-member government composed almost completely by members of the FSLN.

Under Jimmy Carter's presidency, the attitude of the United States towards the Sandinistas was "to treat the new regime with a show of goodwill"[42], approving emergency food aid and economic assistance.[43] However, when President Reagan took office in January 1981 this aid was suspended. The Reagan administration justified this suspension by arguing that the new Nicaraguan government was not only receiving support from the Soviets, but was also assisting the insurgents in El Salvador. In order to oppose the spread of communist regimes in Central America, the United States started funding the right-wing counter-revolutionary groups formed by ex-soldiers of the Somoza National Guard. They were called the Contras.[44]

Reagan's policies towards Nicaragua, and Central America in general, were an application of both the Monroe Doctrine and the Truman Doctrine of Containment (implemented in 1947)[45]. The latter included four main tenets: prevention, alliance, intervention, and free trade. Strategic prevention was conceived as a way of using the threat of nuclear weapons to deter the Soviet Union from launching an attack against the United States and its allies. The system of alliances consisted of the creation of a Western block that would be protected by nuclear weapons from any Soviet aggression. The use of intervention served to establish US forces in developing countries, in order to extend the US area of influence. Finally, all these instruments would guarantee a safe environment for free trade between the United States and its allies, which supposedly increased the financial power of the Western hegemony.

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[42] Draper, Theodore, A Very Thin Line, The Iran-Contra Affairs, [New York, Hill and Wang, 1991] pg. 16

[43] The show of good will of the Carter administration came after efforts had failed to maintain the Somoza's system intact. In this sense, Noam Chomsky says: "When (Somoza's) rule *was* challenged by the Sandinistas in the late 1970s, the US first tried to institute what was called "Somocismo [Somoza-ism] without Somoza" - that is, the whole corrupt system intact, but with somebody else at the top. That didn't work, so President Carter tried to maintain Somoza's National Guard as a base for US power. (...)The Carter administration flew Guard commanders out of the country in planes with Red Cross markings (a war crime), and began to reconstitute the Guard on Nicaragua's borders." Chomsky, Noam, "Teaching Nicaragua a Lesson", in http://www.zmag.org/chomsky/sam/sam-2-03.html

[44] "Contra" in Spanish means "against".

[45] See Sanders, Jerry, "Reaganismo y Economía Mundial", Raíces de la Política Norteamericana hacia Nicaragua, [Managua, Cuadernos de pensamiento propio, 1987]

Thus, the rationale behind Reagan's foreign policy turned on the containment of communism through various instruments, with one of them being the use of covert operations.[46] These have been defined as the use of aggressive clandestine actions abroad, undertaken to oppose the nation's adversaries.[47] With the aid of the United States, opposition bands against the new "democratic coalition government" of Nicaragua were organized into two main groups: the Fuerza Democrática Nicaragüense (FDN),[48] a trained fighting force that started operating in 1981 along the borders with Honduras, and the Alianza Revolucionaria Democrática (ARDE),[49] which started its activities in 1982 operating along the borders with Costa Rica. Both the FDN and ARDE constituted the Contras.

The initial activities of these groups were financed with funds from the CIA made available for covert action. The size of the insurgent groups increased notably with this financial assistance: from an initial body of five hundred men in December 1981, the Contras turned into a force of twelve thousand men by November 1983. Although the operations were at the beginning undisclosed, it did not take long before their actions became public.

In 1983, the US Congress made specific provision for funds to be used by intelligence agencies in the direct or indirect support of military or paramilitary operations in Nicaragua. The US administration alleged that the Sandinistas were expanding their defensive scope by supporting outbursts of violence in the region, thus posing a great threat to neighbouring countries, namely, El Salvador[50], Honduras, and Costa Rica. The feeling was that the Soviets

[46] Benítez, Raúl; Lozano, Lucrecia; Bermúdez, Lilia, Estados Unidos contra Nicaragua, la guerra de baja intensidad en Centroamérica, [Madrid, Ed. Revolución, 1987] pg. 53.
[47] Op. Cit. Loch Johnson, pg ix.
[48] In English, Democratic Nicaraguan Force
[49] In English, Democratic Revolutionary Alliance
[50] The Sandinista movement in Nicaragua and the armed opposition in El Salvador shared their ideology. El Salvador had gone through long years of repressive right-winged dictatorship by the National Conciliation Party, and there was great social discontent due to the outstanding inequalities, the poverty and the dreadful state of the Salvadorian economy. When civil war erupted between the government and the leftist guerrilla units, the United States intervened in support of the military dictatorship. The war in El Salvador lasted for 12 years.

and their allies were engaged in a program of cultural influence, which was beginning to yield strategic results in the area.[51]

Although the US Congress was willing to prevent the flow of arms from Nicaragua to El Salvador, it opposed the executive's determination to overthrow the Sandinista government. Thus the CIA and the Department of Defence were proscribed from funding or providing military training to the Contras. Only humanitarian assistance, by way of provision of food, clothing and medicines, was approved. Nevertheless, even though Congress proscribed financial aid to the Contras, the Reagan administration developed different sources of funding to keep financing the insurgents. At first, the financial and military assistance was provided through private sources and third countries. Later on, it was supplied with profits from sales of arms to Iran, which needed the weapons to fight its war against Iraq. These covert operations became known as the Iran-contra affairs.

Iran-Contra affairs

By the time Reagan came to power, there were differing opinions on the issue of covert actions between members of the legislative and members of the administration. For example, the tasks and functions of the National Security Council (NSC) were not clearly established, and the trust placed by the president in the National Security Adviser and the Secretary of State created a strong rivalry between their positions. In addition, the Vietnam fiasco, the Bay of Pigs debacle, and US involvement in Chile's *coup* had led Congress to take several measures to deal with covert operations. The president was required to present "findings" on covert activities – that is, reports with the president's signature describing the need and nature of covert operations[52] –, and the president was obligated by the Intelligence Oversight Act to give prior notice to the congressional intelligence committees of any significant intelligence activity, including covert operations. As a result, Reagan in fact codified the entire intelligence

[51] Marcella, Gabriel, "Security, Democracy, and Development: The United States & Latin America in the Next Decade", in http://www.airpower.maxwell.af.mil/airchronicles/aureview/1986/jul-aug/marcella.html
[52] Op. Cit. Draper pg. 14

system, ascribing the Central Intelligence Agency (CIA) with direct responsibility for covert activities.

The intervention in Nicaragua generated further disputes within the US government. Although Congress was willing to support the interdiction of armament flows from Nicaragua to El Salvador, it was against the initiative of the executive to overthrow the Sandinistas. The executive, on the other hand – namely President Reagan, the director of the CIA William Casey, and National Security Adviser Robert McFarlane –, was determined to undermine the Nicaraguan government, and to give full support to the counter-revolutionary movement.[53]

Despite the obligation to give prior notice to the congressional intelligence committees of any significant intelligence activity, the congressional committees, to which the CIA was now supposed to report, only knew as much as the CIA chose to tell them, or "what they read in the newspapers."[54] Hence, the House Select Committee on Intelligence was outraged when it became known that financial aid was being directed to weaken the Sandinista government. Efforts were immediately directed to cut off the funds for the Nicaraguan resistance. The Boland I amendment (1983) prohibited the CIA and the Department of Defence from using any funds to overthrow the Nicaraguan regime. In breach of this provision, the CIA secretly placed magnetic mines in several Nicaraguan ports with Reagan's authorization. This crisis of trust between Congress and the executive branch then brought about Boland II (1984), which proscribed any military or paramilitary support for the Contras for the period of October 1984 to December 1985.

Despite these frictions, the government was determined to keep the Contras together "body and soul". Since the CIA and the Department of Defence were banned by the Boland amendments from directing resources to the empowerment of the Contras, the task of raising the funds and keeping support for the insurgents alive was given to members of the NSC staff. In Robert McFarlane's terms:

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[53] See Sorensen, Theodore C. "The President and the Secretary of State", Foreign Affairs, Winter 1987/88
[54] Op. Cit. Draper, pg. 15

> "Congressional restrictions made it impractical for either the Defence Department or the Central Intelligence Agency to function even as a liaison with the Contras. The State Department had always been disinclined to be associated with a covert action. But the President had made it clear that he wanted a job done. The net result was that the job fell to the National Security Council staff."[55]

Yet, the "job" was not assigned to the whole of the NSC staff, but to one specific person, Oliver North, appointed as the sole contact of the United States government with the Nicaraguan insurgents. North was a marine officer who became infamous for orchestrating a master plan of covert operations to keep funding the Contras, regardless of Congress' prohibitions. With the guidance of the CIA's director William Casey, he initially arranged that the financing for the rebels came from third countries, namely Saudi Arabia, Taiwan, Brunei and South Korea, as well as from private contributions. Later on, the United States diverted profits from arms sales to Iran, who in turn was waging war against Iraq, to the Contras.

The Iran affair began with the abduction of seven North American citizens, who were taken hostage in Lebanon by presumably pro-Iranian Shiite groups, between 1984 and 1985. Before these events took place, the United States had launched an international campaign known as Operation Staunch, to prevent arms sales to Iran because the Ayatollah Khomeini's regime was accused of supporting international terrorism. The abduction of the Americans in Lebanon, however, forced the US administration to re-examine its position towards Iran, as it was suggested that the abducted citizens could be traded for weapons. In 1985, an agreement was reached whereby Israel would serve as mediator between the United States and Iran, to sell US-made arms to the latter. Iran, in turn, would intercede with the Hezbollah kidnappers for the liberation of the hostages. Reagan's conscience was in this way eased by the thought that the United States was not selling the arms directly.[56] Yet, the "arms-for-hostages" deal was doomed to failure. The strategy of trading arms for hostages required that there were hostages to be traded, thus, releasing all those kidnapped was not convenient for Iran, as long as arms could be acquired in return for hostages. This was proven by the first Israel–Iran transaction of arms for *one* hostage.

[55] Ibid, pg. 34
[56] Ibid, pg. 159

The Iran policy created an irreconcilable split in Reagan's administration. While the Secretaries of State and Defence did not support the arms deals with Iran, the director of the CIA and the National Security Adviser regarded the arms trade as the only way to save the hostages, and to achieve a change in Iran's government. Hence, President Reagan gave the latter total control of US foreign policy in this regard. John M. Poindexter, the National Security Adviser who took over from Robert McFarlane, and Oliver North, were appointed to handle both the Iran and Contra affairs at the same time, but it was "Ollie" North who ultimately decided that the residual funds from the sale of arms to Iran should be diverted to the Contra operation.

This decision constituted the meeting point of the Iran and Contra affairs, which were, as Draper notes, separate and independent matters. According to North, the residual funds would be "used to purchase critically needed supplies for the Nicaraguan Democratic Resistance Forces. This materiel is essential to cover shortages in resistance inventories resulting from their current offensives and Sandinista counter-attacks..."[57] Even though Poindexter was informed of the diversion of Iran funds for the Contras, it was alleged that President Reagan was never consulted on this critical issue.

Thus, for almost two years, vital information was kept from the oversight committees in both the Senate and the House of Representatives, with the excuse that the CIA was the only agency legally charged with conducting covert activities, and therefore the only one that could be called to respond before Congress. President Reagan considered the NSC staff to be his personal staff and thereby, according to the doctrine of the separation of powers, exempt from congressional oversight.[58] Moreover, by accusing the Sandinistas of having links with Gadafi in Libya, the US Congress was persuaded to approve $500 million more in military and humanitarian aid to the Contras in 1986.

[57] Ibid, pg. 302
[58] Ibid, pg. 342

Nevertheless, suspicions on the NSC staff's activities and the CIA's connivance were increasing, and later on this was confirmed by an incident that occurred to a plane sent to re-supply a Contra group located in northern Nicaragua. The aircraft was shot down and one member of the crew, a US citizen, was captured by the Sandinistas. Washington denied any connection with the plane at the Iran-contra congressional hearings, but this episode inevitably began to unravel the entire operation. The "diversion memorandum", in which North expressed his intentions of directing the residual funds to the Contras in Nicaragua, was disclosed, and the whole deal spawned a major political crisis. The public opinion and the American media were shocked by the revelation that "the administration had been saying one thing publicly and doing the opposite clandestinely."[59] The concealment of information was based on the concept of "plausible deniability" of covert operations, explained by Draper in the following terms:

> "[b]y their very nature covert operations make it possible to put the good name or best interests of the country in such jeopardy that the only way to escape from the cost of failure or exposure is the ability to deny that they ever happened or to put the blame on someone else."[60]

In the case in point, US officials involved in the Iran-contra affairs tried to blame it all on Israel. Nevertheless, it was obvious that Israel had been just a mediator to "get the job done", as North, McFarlane and Poindexter put it.

United States' activities in and against Nicaragua

As mentioned above, US support to the Contras also included the mining of Nicaraguan ports or waters in order to close or restrict their access. Between February and April 1984, a total of 12 vessels and fishing boats from different nationalities were destroyed or damaged by mines, two people were killed, and 14 wounded. On 10 April 1984, it was announced that President

[59] Ibid, pg. 470
[60] Ibid, pg. 561

Reagan had approved the mining.[61] According to press reports, the mines were fabricated by the CIA, with the help of a United States Navy Laboratory. They were laid on the sea-bed and triggered either acoustically, magnetically, by contact or by water pressure. The Soviet government accused the United States of being responsible for the mining. Likewise, the British Government manifested that it deplored the mining "as a matter of principle."[62] As a result of the mining of ports, there was a rise in marine insurance rates for cargo to and from Nicaragua. In addition, some shipping companies stopped sending vessels to Nicaraguan harbours.

US officials were also involved in the perpetration of attacks on ports and oil installations in late 1983 and early 1984. These acts were committed either directly by US military personnel, or by "UCLAS", Unilaterally Controlled Latino Assets, who were persons paid by, or acting on the direct instructions of US military or intelligence personnel. US aircraft also performed over-flights in Nicaraguan airspace, in order to supply the Contras, gather intelligence information, and intimidate the civilian population.

The "UCLAS" made several attacks, *inter alia*, the blowing up of several underwater oil pipelines and part of the oil terminal at Puerto Sandino,[63] an attack to the port of Corinto, which involved the destruction of five oil storage tanks, the loss of a great amount of fuel, and the displacement of a large part of the local population,[64] an attack using rockets against the Potosí Naval Base,[65] and several clashes between speed boats of mine-laying operations and Nicaraguan patrol boats.[66] US agents participated in the planning, direction, support and execution of the operations. In order to carry out these attacks, a "mother ship" was supplied by the CIA, as well as speedboats, guns and ammunition. Helicopters were piloted by both Nicaraguans and US nationals. Along with Honduras, military manoeuvres were carried on Honduran territory, near the Nicaragua/Honduras frontier. The manoeuvres included the

[61] Decision of the ICJ of 26 November 1986, Case Concerning Military and Paramilitary Activities in and against Nicaragua, pg. 47
[62] Ibid
[63] On 13 September 1983, Ibid
[64] On 10 October 1983, Ibid
[65] On 5 January 1984, Ibid
[66] Between 28 and 30 March 1984

patrolling of warships of the Nicaraguan coasts, both Atlantic and Pacific, troop movements and paratrooper exercises.

The CIA further prepared manuals about guerrilla warfare, which were distributed among the Contra fighters in 1983. The most significant was entitled "Operaciones sicológicas en guerra de guerrillas,"[67] printed in several editions, and used to train middle-level commanders. The manual had sections manifestly opposed to humanitarian law. For example, one called "Implicit and Explicit Terror" gave directions on how to destroy military and police installations by cutting lines of communication, kidnapping officials, and the eventual need to fire on citizens if there was a risk of informing the enemy. There was a chapter on the "Selective Use of Violence for Propagandistic Effects", which explained how to "neutralize" selected and planned targets, such as judges, police forces and State officials. In the section on "Control of mass concentrations and meetings", it was stated:

> "if possible, professional criminals will be hired to carry out specific selective jobs (...) Specific tasks will be assigned to others, in order to create a `martyr´ for the cause taking demonstrators to a confrontation with the authorities, in order to bring about uprisings or shootings, which will cause the death of one or more persons, who would become the martyrs, a situation that should be made use of immediately against the regime."[68]

According to the Intelligence Committee of Congress, the manual proved the lack of organization of the CIA, but not an intentional violation of the executive orders.

A series of economic measures were also implemented against Nicaragua. Economic aid was halted in 1981; the United States put pressure on the Bank for International Reconstruction and Development and the Inter-American Development Bank to oppose or block loans to Nicaragua; the quota for sugar imports from Nicaragua was reduced by 90 per cent; and a total trade embargo was declared on Nicaragua on 1 May 1985. The President of the United States declared a "national emergency" created by the policies of Nicaragua towards other Central American States, and proclaimed an executive order of embargo, barring Nicaraguan vessels

[67] In English, Psychological Operations in Guerrilla Warfare.
[68] Op. Cit. Decision of the ICJ of 27 June 1986, pg. 66

from US ports, excluding Nicaraguan aircraft from air transportation to and from the United States, and prohibiting all imports from and exports to that country.

As a result of the judicial process, the Court ruled against the United States, but the United States refused to abide by the judgments. Unable to get the Security Council to enforce the decision of the ICJ, Nicaragua turned to the General Assembly. On 3 November 1986, the Assembly adopted a Resolution recommending that the United States comply with the ruling. This decision was also ignored. In view of this outcome, Nicaragua then filed new suits against Honduras and Costa Rica. In response, Oscar Arias, President of Costa Rica, committed himself to search for peace between the Central American countries, and to prevent Nicaragua from filing its new application in the ICJ. To that end, he created the "Arias Plan" to bring peace in and between Nicaragua, Costa Rica, Honduras, Guatemala and El Salvador.[69] This plan led to his award of the Nobel Peace Prize in 1987 and President Ortega agreed to withdraw the lawsuit against Costa Rica, and the suspension of the suit against Honduras. The Sandinistas and the Contras finally agreed to a cease-fire in March 1988, and free elections were held in Nicaragua on February 1990.[70]

[69] The "Arias Plan" included: the termination of all support to irregular forces in the region, and the prohibition to use any territory in Central America by irregular forces to attack another State; the holding of direct talks between governments and irregular forces in Nicaragua, El Salvador, and Guatemala, and the negotiation of a cease-fire; the direct negotiations between governments and opposition groups to eliminate the restrictions on civil liberties and set the conditions for democratic elections; the downsizing of armed forces to levels appropriate just for defence; and finally, the signing of peace agreements among all five countries of the region.

[70] The Sandinistas were defeated by Violeta Chamorro's coalition. George H. Bush Sr., who had been Reagan's vice-president, offered Nicaragua substantial assistance to help reconstruct the country. Chamorro chose a friendly relationship with the United States, rather than pursuing the reparations demand in the ICJ unlikely to be ever satisfied. Thus, Nicaragua's request for reparations was withdrawn from the Court in 1991, marking the end of all proceedings of Nicaragua v. United States of America.

Chapter II
- Judgments on the case concerning military and paramilitary activities in and against Nicaragua -

There were two decisions in the case Concerning Military and Paramilitary Activities in and against Nicaragua: the judgement of 26 November 1984, on the issues of the jurisdiction of the Court and the admissibility of the application of Nicaragua, and the judgment of 27 June 1986, on the merits of the case or matters of substance. We will go briefly through the former, and concentrate on the arguments of the latter.

Judgment of 26 November 1984, Case concerning military and paramilitary activities in and against Nicaragua, jurisdiction of the Court and admissibility of the application

On 9 April 1984, Nicaragua filed an application instituting proceedings against the United States, concerning military and paramilitary activities carried out by the United States in and against Nicaragua. The latter affirmed that the jurisdiction of the Court was founded on declarations made by the parties accepting the compulsory jurisdiction of the Court, and on the application of a Treaty of Friendship, Commerce and Navigation signed by the parties in 1956. The United States, on the other hand, sustained that the Court was without jurisdiction to deal with the application, and requested the termination of the proceedings.

The first contention was that Nicaragua's acceptance of the compulsory jurisdiction of the ICJ had been incomplete and never perfected, because there was no record of an instrument of ratification in the files of the League of Nations. The Court, however, argued that Nicaragua's declaration concerning the compulsory jurisdiction of the Permanent Court was undoubtedly valid, because it had ratified the Protocol of Signature of the Statute of the PCIJ in 1929. Furthermore, the fact that Nicaragua took part in the United Nations Conference at San Francisco, thus ratifying the Statute of the ICJ (24 October 1945), evidenced its acquiescence and recognition of the compulsory jurisdiction of the Court.

Secondly, Nicaragua argued that US acceptance was based on a declaration of August 1946, which contained the following reservation in relation to Article 36 of the Statute of the ICJ: "(the contents of the Article will) remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate this declaration."[71] In view of this, the government of the United States deposited a notification at the UN three days before Nicaragua's application (6 April 1984), stating that "the aforesaid declaration shall not apply to disputes with any Central American State or arising out of or related to events in Central America (...) this proviso shall take effect immediately and shall remain in force for two years..."[72]

In the Court's view, the 1984 notification infringed the principle of good faith, for its intention was to exempt the United States, with immediate effect, from the obligation to subject itself to the Court's jurisdiction in relation to any application relative to Central America.[73] The Court asserted that the unilateral nature of declarations does not signify that States are free to amend the scope and contents of their solemn commitments, because they establish bilateral engagements with other States accepting the same obligation of compulsory jurisdiction.

Additionally, the United States alleged it had made another reservation to the declaration of acceptance of the jurisdiction of the Court in 1946 in the sense that its acceptance would not extend to disputes arising under a multilateral treaty, unless all the parties to the treaty *affected* by the decision were also parties to the case. As the application of Nicaragua relied on several multilateral treaties, namely the UN Charter and the Charter of the Organization of American States (OAS), the United States contended that unless Honduras, Costa Rica and El Salvador were also parties to the case, its acceptance could not apply. The Court asserted that the objection based on the reservation of the multilateral treaty was not an exclusively preliminary

[71] Op. Cit. Decision of the ICJ of 26 November 1986, pg. 398
[72] Ibid
[73] Ibid, pg. 417

objection,[74] as it raised questions concerning matters of substance. Nevertheless, since Nicaragua did not confine its claims to breaches of multilateral treaties, but also to principles of general and customary international law, the Court considered it was not barred by the multilateral treaty reservation.

Nicaragua further invoked the Treaty of Friendship, Commerce and Navigation of 1956 as a complementary foundation for the Court's jurisdiction. Article 24, paragraph 2 of the Treaty contained a compromisory clause, establishing that any dispute between the parties as to the interpretation or application of the treaty, not satisfactorily adjusted by diplomacy, should be submitted to the ICJ, unless the parties agreed to settle them by some other means. The United States, on the other hand, alleged that Nicaragua had not argued in its application any violation of the Treaty and, therefore, Article 24 could not be the basis of jurisdiction. According to the Court, this disagreement evidenced a dispute between the parties regarding the interpretation and application of the Treaty and, consequently, it had jurisdiction under the Treaty to entertain the claims.

In relation to the inadmissibility of Nicaragua's application, the United States alleged that Nicaragua had failed to bring before the court those parties whose participation was necessary, namely El Salvador, Honduras and Costa Rica. In the ICJ's view, nothing prevented other States that considered themselves affected by the decision to institute separate proceedings, or to employ the procedure of intervention in the judicial process. The claim was therefore dismissed.

Concerning the unlawful use of armed force, breach of peace or acts of aggression by the United States against Nicaragua, the former contended that the Court was without jurisdiction to decide on the matter. The claim was that the Court was not competent to decide whether US actions were justified by the exercise of the inherent right of individual or collective self-defence or whether, on the contrary, they constituted threats of peace, breaches of peace or

[74] A preliminary objection is one "submitted for the purpose of excluding an examination by the Court of the merits of the case, and being one upon which the Court can give a decision without in any way adjudicating upon the merits." In Op. Cit. Decision of the ICJ of 27 June 1986, pg 30

acts of aggression, since these matters were entrusted exclusively to the Security Council. In response, the ICJ considered that Article 24 of the UN Charter confers primary but not exclusive responsibility to the Security Council for the maintenance of international peace and security. The Council's function is of a political nature, whereas the Court's is purely judicial, hence, both organs can perform their separate but complementary functions about the same events.

Finally, the United States argued that Nicaragua had failed to exhaust the Contadora process, established for the resolution of conflicts in Central America.[75] The Court dismissed the contention, as it considered that the Contadora process was not a regional arrangement for the purposes of Chapter VII of the UN Charter. And even if it was, Article 103 of the Charter established that obligations acquired under the UN Charter prevailed over those derived from any other international agreement.

Decision of the Court

By a judgement dated 26 November 1984, the Court found: a) that it had jurisdiction to entertain the application on the basis of Article 36 of the Statute of the Court,[76] and on the basis of the Treaty of Friendship, Commerce and Navigation of 1956 between the United States and Nicaragua, and b) that the application was admissible.

[75] The Contadora process was a Latin American diplomatic effort endorsed by the OAS to stabilize the Central American situation. It aimed at preventing military confrontation between neighboring states, and also at preventing direct military intervention by the United States. Although the United States was not a party to the Contadora negotiations, it was understood that it would sign a separate protocol in 1985 agreeing to the terms of a final treaty, in areas such as aid to insurgents, military aid, and assistance to Central American governments. For further information on the Contadora process see http://countrystudies.us/el-salvador/85.htm

[76] Paragraphs 2 and 5 of Article 36 of the Statute of the Court establish: "(...) 2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a. the interpretation of a treaty; b. any question of international law; c. the existence of any fact which, if established, would constitute a breach of an international obligation; d. the nature or extent of the reparation to be made for the breach of an international obligation. (...) 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms." Op. Cit. http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm#CHAPTER_II

Decision of the United States not to participate in further proceedings

As a result of the judgement of 26 November 1984, the US government informed the Court that it would not participate in any further proceedings. In its viewpoint, the Court had no jurisdiction to entertain the case, and the application should have been declared inadmissible. By a letter dated 18 January 1985, the United States addressed the Court in these terms:

> "The United States is constrained to conclude that the judgement of the Court was clearly and manifestly erroneous as to both fact and law. The United States remains firmly of the view, for the reasons given in its written and oral pleadings that the Court is without jurisdiction to entertain the dispute, and that the Nicaraguan application of 9 April 1984 is inadmissible. Accordingly, (...) **the United States intends not to participate in any further proceedings in connection with this case, and reserves its rights in respect of any decision by the Court regarding Nicaragua's claims.**"[77]

Nicaragua called upon the Court to decide the case despite the failure of the respondent to appear, invoking Article 53 of the Statute of the Court.[78]

Judgment of 27 June 1986, Case concerning military and paramilitary activities in and against Nicaragua, Merits

In the merits phase, Nicaragua requested the Court to adjudge and declare the following:

- The United States violated the UN Charter, the Charter of the Organization of American States, the Convention concerning the Duties and Rights of States in the event of Civil Strife, by recruiting, training, arming, equipping, financing and

[77] Op. Cit. Decision of the ICJ of 26 November 1984, pg. 17. Highlight is ours.
[78] Article 53 of the Statute of the Court establishes: "1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favour of its claim.
2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law." In op. cit. http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm#CHAPTER_II

supplying paramilitary groups, and by encouraging, supporting, aiding and directing military and paramilitary actions in and against Nicaragua;

- The United States violated Nicaragua's sovereignty by carrying out armed attacks by air, land and sea, entering into Nicaraguan territorial waters and airspace, and by implementing direct and indirect means through the use and threat of force to coerce and intimidate its government;
- The United States unlawfully intervened in Nicaragua's internal affairs; infringed the freedom of the high seas, interrupted peaceful maritime commerce, killed, wounded and kidnapped Nicaraguan citizens.

Therefore, Nicaragua's pleadings were that the Court declared that the United States had the duty to cease and desist from:

- The use of force – whether direct or indirect, overt or covert -;
- All violations of the sovereignty, territorial integrity and political independence of Nicaragua;
- All support to any group, organization, movement or individual who engaged or planned to engage in military or paramilitary activities in or against Nicaragua;
- All efforts to restrict, block or endanger access to or from Nicaraguan ports;
- All killings, wounding and kidnappings of Nicaraguan citizens.

Nicaragua also demanded the Court to declare that the United States had the obligation to pay reparations for damages to persons, property and the Nicaraguan economy.[79]

Arguments of the Court

The United States did not file any pleading on the merits of the case, nor was it represented at the hearings, alleging that the Court was without jurisdiction to entertain the dispute.

[79] Nicaragua claimed: "the United States has withdrawn its own aid to Nicaragua, drastically reduced the quota for imports of sugar from Nicaragua to the United States, and imposed a trade embargo; it has also used its influence in the Inter-American Development Bank and the International Bank for Reconstruction and Development to block the provision of loans to Nicaragua." In op. cit. Decision of the ICJ of 27 June 1986, pg 22

However, one of its contentions in the counter-memorial on the questions of jurisdiction and admissibility questioned the legal grounds upon which the ICJ could entertain the dispute. The answer given by the Court to this objection was fundamental, as it affirmed that the principles of international law, mainly non-intervention and non-use of force, were sufficient as legal grounds for the resolution of the case.

The objection dealt with the law applicable to the dispute, posing the following problem for the Court: the United States argued that, due to the multilateral treaty reservation of 1946, the multilateral treaties invoked by Nicaragua, i.e. the UN Charter and the OAS Charter, could not be applied to the case; nor could the principles of international law, as they are included in both these instruments. In the US viewpoint, the inclusion of the principles in both Charters precluded the possibility that similar rules existed independently in customary international law. This argument was problematic because the admission of US allegations purported the absence of legal grounds for the ICJ to entertain the dispute. In other words, the contention entailed that the principles of international law could not be applied independently from the UN Charter and the OAS Charter, which were, in effect, inapplicable to the case.

To resolve this difficulty, the Court took the view that customary international law continues to exist independently from treaty-law, in other words, that customary law has a separate applicability from the conventions, declarations and treaties in which they are included. In this sense, "... there are no grounds for holding that when customary international law is comprised of rules identical to those of treaty law, the latter 'supervenes' the former, so that the customary international law has no further existence of its own."[80]

To support this pivotal contention, the ICJ noted that when Article 51 of the UN Charter establishes the "inherent right" of individual or collective self-defence, the expression is only meaningful on the basis of a "natural" right of self-defence that stems from pre-existing customary international law independent from the Charter. Moreover, although the Charter does not state that self-defence only warrants measures which are **proportional** to the armed

[80] Ibid, pg. 95

attack and **necessary** to repel it, these are well instituted rules in customary international law. This proves that the Charter does not regulate all aspects of the right of self-defence.

Hence, it is wrong to assert that customary international law cannot be applied separately from international treaty law when they both have the same contents, just as it cannot be held that Article 51 "subsumes and supervenes" customary international law in relation to the right of self-defence. Indeed, "... customary international law continues to exist and to apply, separately from international treaty law, even where the two categories of law have identical content."[81] This argument served as grounds for the Court to rule based on the principles of customary international law, despite the fact that neither the UN Charter nor the OAS Charter was applicable to the case.

Since the United States did not file any pleading and was not represented at the hearings on the merits phase, the Court was bound to analyse the argument adduced in the counter-memorial on the questions of jurisdiction and admissibility, i.e. that US actions had been based on the **right of collective self-defence**, guaranteed by Article 51 of the UN Charter. The Court felt further obliged to examine whether there were other rules in customary international law not mentioned by the United States that could justify its conduct. As a result, it studied the **right to take counter-measures** in response to a conduct that does not necessarily constitute an armed attack.

The line of argumentation followed by the Court concerning both the right of collective self-defence and the right to take counter-measures was syllogistic. As to the former, the main premise was: collective self-defence constitutes a justification for the infringement of the principle of non-use of force; minor premise: the facts on which the United States based the invocation of collective self-defence did not meet the conditions for its conduct to be justified; conclusion: the United States contravened the principle of non-use of force.

[81] Ibid, pg. 96

The argument based on counter-measures was structured as follows. Main premise: the right of a State to take counter-measures in response to a previous wrongful act from another State constitutes an exception to the principle of non-intervention; minor premise: the United States was not the direct victim of Nicaragua's prior wrong-doing; conclusion, the United States was not entitled to take counter-measures against Nicaragua and, hence, it infringed the principle of non-intervention. We will take a look at each of the arguments separately, in order to understand the way the Court reached its conclusions.

The right of collective self-defence – principle of non-use of force

The concept of self-defence in inter-State relations has been defined as "a lawful use of force, under conditions prescribed by international law, in response to a previous unlawful use (or at least a threat) of force."[82] The invocation of the right of individual or collective self-defence purports the intention to justify a conduct that would otherwise be wrongful. Acting in self-defence or collective self-defence constitutes an exception to the rule that prohibits the use of force. If the exercise of the right is justifiable, then the intervention involving the use of armed force would not constitute a breach of the principle of non-use of force. However, if the absence of that justification is proven, the invocation of the right implies an admission of the conduct, the wrongfulness of that conduct, and the breach of international law.

In the Court's viewpoint, the defence of a conduct that is contrary to international law by appealing to exceptions contained in the rules themselves entails a confirmation of the rules, rather than a weakening of the norms and principles. Thus, if the prior armed attack could not be sufficiently established, the invocation of the justification of collective self-defence by the United States implied not only a recognition of the wrongfulness of the conduct, but also a reaffirmation of the rule of non-use of force.

The Court proved that the parties shared an *opinio juris* with regards to the binding character of the rule of non-use of force from their consent to the Declaration on Principles of

[82] Dinstein, Yoram, War, Agression and Self-Defence, [New York, Cambridge University Press, 1995] pg. 175

International Law, Friendly Relations and Cooperation, which implies an acceptance of the set of rules therein established. This Declaration reaffirms the principles of non-use of force and non-intervention, and provides that there are certain cases in which the use of force is lawful, that is, when the State is acting in collective or individual self-defence. Thus, subscribing to this instrument entails an acceptance to the customary rule that the lawfulness of the response to an armed attack depends on the observance of the criteria of necessity and proportionality of the measures taken in self-defence.

Under the provision of Article 51 of the UN Charter, a State is permitted to use force only in response to armed aggression. The use of force is forbidden except when there has been an armed attack by another State that justifies using force against it. What is understood by "armed attack"? According to the Court, an armed attack is a type of aggression, defined by Article 1 of the Definition of Aggression annexed to General Assembly resolution 3314 in the following terms: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations."[83]

Article 3 of the Definition of Aggression establishes:

> "Any of the following acts, regardless of a declaration of war, shall, subject to and in accordance with the provisions of Article 2, qualify as an act of aggression:
> a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State, or part thereof;
> b) Bombardment by the armed forces of a State against the territory of another State, or use of any weapons by a State against the territory of another State;
> c) The blockade of the ports or coasts of a State by the armed forces of another State;
> d) An attack by the armed forces of a State on the land, sea or the air forces, or marine and air fleets of another State;

[83] UN General Assembly Resolution 3314 of 14 December 1974, Definition of Aggression, in http://www.un.org/documents/ga/res/29/ares29.htm

> e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement, or any extension of their presence in such territory beyond the termination of the agreement;
> f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
> g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein."[84]

In the Court's interpretation, Article 3 paragraph g of the Definition of Aggression leads to infer that an armed attack must be understood as including not merely action by regular forces across an international border, but also the sending of armed groups, which carry out acts of armed force against another State of such gravity as to amount to, *inter alia*, "**an actual armed attack** conducted by regular forces".[85] In other words, the Court argued that the sending of armed bands to the territory of another State might indeed constitute an armed attack, but only if such an operation supersedes a mere frontier incident on the basis of its scale an effects. In the Court's viewpoint, assistance to rebels in the form of the provision of weapons, logistical or other kind of support does not fall into the category of "armed attack". It may be regarded as a threat or use of force, or amount to intervention in the internal affairs of another State.

While the United States allegations intended to justify its wrongful conduct, Nicaragua's arguments were directed to prove that US activities were not justified, and therefore constituted a breach of the applicable instruments and principles of international law. In Nicaragua's terms, the references made by the United States to the justification of collective self-defence were merely "pretexts" for its activities, as the US' real objectives were to impose its will upon Nicaragua and to force it to comply with US demands. The Court sustained that if Nicaragua had been in fact giving support to the armed opposition in El Salvador, and if this

[84] Ibid
[85] Op. Cit. Decision of the ICJ of 27 June 1986, pg. 103

constituted an armed attack on the latter, the existence of additional motives could not deprive the United States from exercising the right to resort to collective self-defence.

Therefore, the ICJ, had to determine in the first place which of the actions committed in and against Nicaragua were imputable to the United States, and secondly, whether Nicaragua's actions against its neighbours amounted to an armed attack. The United States was found responsible for the following actions: the mining of Nicaraguan ports, the infringement of Nicaraguan airspace with over-flights by United States military aircrafts, the carrying out of military manoeuvres jointly with Honduras near the frontier with Nicaragua, the financing and supporting of the military and paramilitary activities of the Contras, and the supply of the manual on psychological guerrilla warfare. Were these actions justified in response to the requests from El Salvador, Honduras and Costa Rica for assistance in their self-defence against an alleged aggression by Nicaragua?

In order to answer this question, it was necessary to determine whether the armed aggression against Nicaragua's neighbours really occurred. The United States claimed that Nicaragua had "promoted and supported guerrilla violence in neighbouring countries", and had openly conducted cross-border military attacks on Honduras and Costa Rica. Nicaragua refuted the claims concerning El Salvador, but did not refer to the accusations concerning Honduras and Costa Rica in the proceedings on the merits. The court studied both cases.

In reference to El Salvador, the United States affirmed that "a major portion of the arms and other material sent by Cuba and other communist countries to the Salvadorian insurgents transits Nicaragua with the permission and assistance of the Sandinistas."[86] Nicaragua, on the other hand, did not deny there had been traffic of arms through the borders with Honduras and Costa Rica. In a declaration given in 1984, the Foreign Minister of Nicaragua explained that the Nicaraguan borders were extremely difficult to control and it was not easy to seal them off to all unwanted and illegal traffic. Moreover, it was well known that in 1981 President Daniel

[86] Ibid, pg. 76

Ortega[87] offered the United States to stop the "movement of military aid, or any other kind of aid, through Nicaragua to El Salvador",[88] thus accepting that there had been some involvement of Nicaragua in the support of insurgency groups in El Salvador.

After studying the evidence, the ICJ found it established that between July 1979 and the early months of 1981 an intermittent flow of arms was routed via Nicaragua to the armed opposition in El Salvador. Nevertheless, it was not proven that the assistance had continued to reach the Salvadorian armed opposition on any significant scale since the early months of 1981. Neither was it established that the government of Nicaragua was directly responsible for the flow of arms. It was the Court's view that if the exceptional resources of the United States, together with the cooperation of the governments of El Salvador and Honduras, were powerless to prevent the arms and provisions traffic, it was unreasonable to demand from the government of Nicaragua a higher degree of diligence. The United States could have stopped the supply of arms and provisions to the Salvadorian insurgents by using a strong patrol force along the frontiers, rendering the military and paramilitary activities in and against Nicaragua disproportionate, as well as unnecessary to achieve that purpose.

Consequently, there had been no armed attack against El Salvador. But additionally, in terms of the conditions for the exercise of the right of collective self-defence, the criteria of proportionality and necessity of the response were not met by the United States. According to the ICJ, it would have been possible to eliminate the main danger to the Salvadorian government without embarking on the activities in and against Nicaragua. This fact weakened the criteria of necessity. As to the condition of proportionality, the mining of the ports, the attacks on ports, oil installations etc., could not possibly satisfy this criterion.

Having dismissed the claims with regards to El Salvador, the Court turned to the allegations concerning Honduras and Costa Rica. In effect, it was clearly established that certain trans-border military incursions into the territories of Honduras and Costa Rica were imputable to

[87] Daniel Ortega Saavedra was a member of the Junta for National Reconstruction of Nicaragua. Later, he was elected President, from 1985 to 1990.
[88] Op. Cit. Decision of the ICJ of 27 June 1986, pg. 79

Nicaragua. However, the little information and evidence available on the cross-border attacks rendered it difficult to decide whether they could be treated for legal purposes as amounting to an armed attack. The ICJ explained that, according to customary international law, collective self-defence cannot be exercised unless two conditions are met: that the State which considers itself the victim of an armed attack has formally declared it, and that it has made a formal request to the State from which it expects to receive help and protection.

In the case of Honduras and Costa Rica, there was not sufficient evidence that proved that such requests for assistance were made to the United States. This led the Court to declare that there was no way to demonstrate that the trans-border military incursions amounted to an armed attack. El Salvador's request, on the other hand, was presented when the United States had already started its activities in Nicaragua. Based on the foregoing, the Court concluded that "neither these incursions, nor the alleged supply of arms to the opposition in El Salvador, may be relied on as justifying the exercise of the right of collective self-defence."[89]

The right to take counter-measures – principle of non intervention

Once it was proven that there were no grounds for the justification of collective self-defence, the Court turned to the examination of the **right to take counter-measures**, as a possible exoneration for the infringement of the principle of non-intervention. The premise was that the use of counter-measures in response to a previous intervention, when lawfully undertaken, constitutes a justification for the violation of the non-intervention rule. Thus, in the ICJ's view, counter-measures, in relation to non-intervention, were analogous to collective self-defence with respect to non-use of force, that is, as an exception to the principle.

The ICJ presented the rule of non-intervention as a corollary of the principle of the sovereign equality of States, for the tenet involves the right of every sovereign State to conduct its affairs without outside interference.[90] The Court asserted that the *opinio juris* regarding the existence of the principle of non-intervention was unquestionable, as evidenced in the numerous

[89] Ibid, pg. 120
[90] Ibid, pg. 108

declarations and resolutions adopted by international organizations.[91] As to the parties, both Nicaragua and the United States participated in the General Assembly meetings for the adoption of the Declaration on Principles of International Law, Friendly Relations and Cooperation. Likewise, the ratification by both States of the legal instruments concerning inter-American relations allowed inferring their irrefutable acceptance of the rule.

When defining the content of non-intervention, the ICJ limited itself to those aspects which appeared to be relevant to the resolution of the dispute. Thus, it emphasized that intervention is wrongful when it uses methods of coercion to affect the political, economic, social, and cultural systems of a State, as well as its foreign relations. All these areas, the Court stressed, must remain free choices of each State.[92] Notably, like in Hedley Bull's definition, *coercion* is the defining and essential element of forbidden interventions in the ICJ's judgments. This element is particularly evident in cases where the intervention involves the use of force, either when it is done through direct military action, or through the indirect support of subversive or terrorist groups. These forms of intervention are wrongful in the light of both the principle of non-intervention and the principle of non-use of force.

According to customary international law, an intervention involving the use of force of a lesser degree of gravity than an armed attack produces an entitlement for the Victim State to take *proportionate* counter-measures. This entitlement implies that, under those circumstances, there is no breach of the principle of non-intervention. In order to determine whether the United States could have justifiably taken counter-measures against Nicaragua, the Court analysed two different arguments.

The first one stated that counter-intervention could have been justified as an exception to the principle of non-intervention, if the practice of States evidenced the existence of an *opinio juris* regarding a new right to intervene in another State in support of an opposition whose cause appeared particularly worthy of support. If the existence of such a new right was proven,

[91] Ibid, pg. 106
[92] Ibid, pg. 108

then a fundamental modification of customary international law concerning non-intervention would have occurred, thus justifying the United States conduct.

The Court therefore analysed whether this unprecedented exception to the principle constituted a modification of the customary international rule of non-intervention. It found that, although some States do justify interventions for reasons concerning the domestic policies of the intervened, its ideology, the level of its armaments, etc., these justifications remain on a political level, and do not enter into the field of international law. According to the ICJ, it is difficult to see what would remain of the principle of non-intervention in international law if intervention, which is already allowable at the request of the government of a State, were also to be allowed at the request of the opposition. Neither the United States nor Nicaragua argued in favour of a new right of intervention in support of an opposition within another State. Hence, the practice of States does not show a tendency in that direction, and consequently, such a situation does not pertain to international law. The first possible argument in favour of the legality of counter-intervention was thus dismissed by the Court.

The second argument consisted in determining whether the activities of the United States towards Nicaragua could be justified as a response to Nicaragua's interventions in the internal affairs of its neighbours, namely El Salvador, Honduras and Costa Rica. The Court reiterated that a State that has been the victim of a previous intervention involving a use of force that does not amount to an armed attack is entitled to take *proportionate* counter-measures without infringing the principle of non-intervention.

The case in point, however, did not meet the conditions for the exercise of this right, because the counter-measures were not taken by El Salvador, Honduras or Costa Rica – the alleged victims of Nicaragua's incursions – but by a third State, the United States. From a legal standpoint, the applicable law does not warrant a justification to take collective counter-measures involving the use of force. Thus, even assuming that Nicaragua had in fact committed the acts of which it was accused (most of which were not sufficiently proven), the only States that could have justifiably taken proportionate counter-measures would have been

its neighbours, particularly El Salvador, Honduras and Costa Rica. A third State was not justified to respond, especially not by using force. This led to the obvious conclusion that, in the absence of a plausible justification, the principle of non-intervention had been contravened by the United States.

ICJ's assessment of the facts in relation to the rules applicable to the case

The Court regarded the following actions as breaches of the principle of **non-use of force**: the laying of mines in Nicaraguan internal or territorial waters in early 1984; the attacks on Nicaraguan ports, oil installations and a naval base; and the arming and training of the "Contras". As previously said, the Court did not find that the conditions were met for the exception to the prohibition of the use of force to be applied, i.e., the exercise of the right of collective self-defence. In support of its argument, the ICJ stressed the fact that the United States never filed the report established in Article 51 of the UN Charter in case a State exercises the right of individual or collective self-defence. This fact is noteworthy, especially because the United States had always insisted in the Security Council that failure to observe the requirement to make a report contradicted a State's claim to be acting on the basis of collective self-defence.

With regards to the principle of **non-intervention**, the Court found it established that, by its support to the Contras, the United States intended to coerce the government of Nicaragua to act against its will on issues which were of the free choice of Nicaragua. The tribunal affirmed that if a State supports and assists armed groups of another State whose intentions are to overthrow the government of that State, this amounts to an illegal intervention in its internal affairs. Accordingly, "... the support given by the United States, up to the end of September 1984, to the military and paramilitary activities of the *contras* in Nicaragua, by financial support, training, supply of weapons, intelligence and logistic support, constitutes a clear breach of the principle of non-intervention."[93]

[93] Ibid, pg. 124

The ICJ was emphatic to assert that whether Nicaragua chose to have a communist regime or a democratic one, this was a decision that fell within the scope of its sovereignty. The Court thus maintained: "However the regime in Nicaragua be defined, adherence by a State to any particular doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty, on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State."[94]

Also, the aid given under the rubric of "humanitarian aid" infringed the principle of non-intervention, as it was only directed to the Contras and their dependents, in discrimination of the rest of the victims of the conflict.

As to the actions of economic nature taken by the United States against Nicaragua, the Court considered they constituted a violation of the Treaty of Friendship, Commerce and Navigation of 1956.

The Court found that the assistance to the "Contras", the mining, the over-flights, as well as the attacks on ports and oil installations, etc., not only constituted violations of the non-use of force, and non-intervention principles, but also of the sovereignty of Nicaragua. In addition, the laying of mines in or near Nicaraguan ports constituted a violation of the freedom of maritime commerce and communications, in detriment of Nicaragua's economy.

Both the laying of mines without giving the proper warning or notification, as well as some of the contents of the manual on psychological operations distributed to the "Contras" by the CIA amounted to breaches to Article 3 common to all four Geneva Conventions, in other words, an infringement of the principles of humanitarian law.

In the light of the Treaty of Friendship, Commerce and Navigation of 1956, the mining of the ports and the attacks, as well as the trade embargo imposed on Nicaragua undermined the

[94] Ibid, pg. 133

whole spirit of the Treaty, as they were not necessary measures for the protection of US interests.

Final Decision

On the basis of the foregoing, the Court decided:

1. That it was required to apply the multilateral treaty reservation contained in the declaration of acceptance of jurisdiction of the ICJ made by the government of the United States in 1946.
2. To reject the argument of collective self-defence adduced by the United States to justify its military and paramilitary activities in Nicaragua.
3. That by training, arming, equipping, financing and supplying the Contra forces, the United States had acted in breach of the principle of non-intervention.
4. That the United States had violated the principle of the non-use of force, by performing attacks on Nicaraguan territory.
5. That the United States had violated the sovereignty of Nicaragua by directing and authorizing over-flights of Nicaraguan territory.
6. That by laying mines in the internal or territorial waters of Nicaragua, the United States had acted in breach of its obligations under customary international law not to use force, not to intervene in the internal affairs of another State, not to violate its sovereignty, and not to interrupt peaceful maritime commerce.
7. That the United States had infringed its obligations founded in the Treaty of Friendship, Commerce and Navigation signed with Nicaragua in 1956.
8. That by failing to warn about the existence and location of the mines, the United States had acted against customary international law.
9. That by producing and distributing the manual on psychological operations, the United States had encouraged the commission of acts contrary to the general principles of humanitarian law.
10. That the United States had committed acts to deprive of its object the Treaty of Friendship by declaring the trade embargo against Nicaragua.

11. That the United States was under the immediate duty to cease and refrain from all acts that constituted breaches of the aforesaid obligations.

12. That the United States had to make reparation to Nicaragua for all the injury caused with its actions. The amount of the reparation would be settled by the Court in a subsequent procedure.

Chapter III

- Comments on the Judgment of 27 June 1986 -

The concept of "armed attack"

Although the main subject of the thesis is the principle of non intervention, it is important to look into the issue of the definition of "armed attack", because in the Nicaragua case the breach of the principle of non-intervention is inseparable from the breach of the principle of non-use of force. Indeed, the Court affirmed that "acts constituting a breach of the customary principle of non-intervention will also, if they directly or indirectly involve the use of force, constitute a breach of the principle of non-use of force in international relations."[95]

The arguments drawn by the Court in order to demonstrate the lack of conditions for the configuration of the justification of collective self-defence seem sound and coherent. Nevertheless, after a careful reading of the judgment one thing remains unclear: what amounts to an "armed attack"? Indeed, the Court maintained that it was necessary to distinguish the gravest forms of the use of force (those which amount to an armed attack) from other less grave forms, and it seemed to classify the frontier incidents in this latter category. According to the Tribunal, there are certain measures which, despite involving the use of force and amounting to aggression, do not constitute an armed attack. It is all a matter of "scale and effects". However, these notions of "scale and effects" seem quite blurry and confusing. What threshold must be reached so that the use of force may be labelled as an armed attack?

The Court affirmed that an armed attack is a type of aggression; one that involves a high degree of use of force, while other incidents are just less serious types of aggression. It seemed to derive the definition of "armed attack" from Resolution 3314 on the Definition of Aggression, according to which the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State constitutes aggression.[96] The

[95] Ibid, pg. 109
[96] Op. Cit. Resolution 3314, Definition of Aggression

Resolution suggests a list of actions that amount to acts of aggression, but subsequently affirms that the acts enumerated are not exhaustive.

The acts listed are basically the following: the invasion or attack of the territory of another State; the bombardment or use of any weapons by a State against the territory of another State; the blockade of the ports or coasts of another State; the attack on the land, sea or the air forces, or marine and air fleets of another State; the use of armed forces within the territory of another State in contravention of the agreement made with that State; allowing its own territory to be used for the perpetration of an act of aggression against a third State; and the sending of armed bands which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.[97]

From the definition of aggression established in Article 1 of the Resolution 3314, it is clear that Nicaragua committed acts of aggression against its neighbours, especially against El Salvador, by sending arms and supporting the opposition of that country. The problem is that a simple act of aggression does not justify the exercise of the right of self-defence. Indeed, Article 51 of the UN Charter establishes: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an **armed attack** occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security..."[98] Thus, the article does not make reference to aggression, but to "armed attack". Since Article 51 is included in Chapter VII of the UN Charter, under the title "Action with respect to threats to peace, breaches of peace, and acts of aggression", one might be led to think that an armed attack is a breach of peace more serious than an act of aggression and that, for that reason, it justifies the disregard of the principle of non-use of force.

The Court's interpretation of Article 3 of the Definition of Aggression seems to derive from this reckoning. In effect, as abovementioned, Article 3 paragraph g of Resolution 3314 is understood by the ICJ in the sense that a mere frontier incident does not constitute an armed

[97] Ibid
[98] Highlight is ours.

attack. For it to be such, it must include the sending of armed groups, which carry out acts of armed force against another State of such gravity as to amount to any of the actions listed in Article 2 of the Definition of Aggression or, in the Court's own words, *an actual armed attack* conducted by regular forces.

This definition is therefore tautological: for an armed attack to effectively *be* an "armed attack", it must involve actions that amount to an "actual armed attack". The concept remains quite unclear. The fallacious argument made by the ICJ to overlook the fact that Nicaragua did commit acts of aggression against El Salvador constitutes a shortcoming in the Court's reasoning.

Notwithstanding, this setback does not really affect the ICJ's conclusion that there were no grounds for the exercise of the right of collective self-defence, since the decision was based on formal aspects, that is, the absence of the declarations of Nicaragua's neighbours of being under attack, and the lack of proof that they had made a request to the United States to come in their aid against Nicaragua's aggressions.

The right to resort to counter-measures

As stated before, the ban on intervention in the internal affairs of States is not absolute. Intervention is justifiable when undertaken upon invitation of the intervened; when done on the grounds of self-defence; when collectively authorized by the international community through an international organization, namely, the Security Council; when carried out for humanitarian reasons, commonly known as humanitarian intervention, and when done to repel another intervention, also known as *counter-measures* or *counter-intervention.*

Counter-measures are defined as unlawful actions that are justified by a prior violation. They are retaliatory activities that do not involve the use of force, and which would constitute a breach of international law if they were not taken in response to an initial wrongful act by the other State. Thus, a State that resorts to counter-measures legitimately takes justice into its

own hands. In its attempt to frame an adequate regime of unilateral responses to unlawful State conduct, the International Law Commission stated that the object of counter-measures is "to inflict punishment or to secure performance."[99] Applying counter-measures in excess of its lawful function makes the act unlawful, especially if the purpose is to inflict punishment.

In analogy to self-defence, measures taken in retaliation must meet certain conditions: they must be *proportional* to the injury suffered, and *no prior commitment to resort to other means of dispute settlement* must be in place between the parties involved.[100] Economic sanctions and forceful actions short of armed force are commonly used by international actors as counter-measures, but the use of armed force and violations of human rights are strictly prohibited.

The topic of counter-measures or counter-intervention has not been free of discussion and debate. Many believe that counter-measures have essentially been an instrument of powerful States to enforce their interests upon weaker States.[101] Others, however, maintain that, since the use of force is forbidden, the international order has restricted the use of counter-intervention to an extent that no serious damage can be inflicted to the wrong-doing State. In this sense, "[n]ormally, a conflict which commences with an initial act of an allegedly wrong-doing State, and which prompts a response (...) termed a counter-measure, remains within the area of clashes and frictions that can be settled by diplomatic means."[102]

The Court examined the right to take counter-measures as a possible justification for the United States' activities in and against Nicaragua. Two elements, however, excluded *a priori* the configuration of the exception to the principle of non-intervention in the present case: the use of force by the United States, and the fact that the United States was not the victim of Nicaragua's wrongdoing. As has been said, the use of armed force is prohibited as a counter-measure. The indirect support of subversive groups with the purpose of affecting the political system of a State evidences the element of coercion, which characterises an unlawful

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[99] International Law Commission, Fiftieth Session on State Responsibility, in http://untreaty.un.org/ilc/documentation/english/a_cn4_488_add3.pdf
[100] O'Connell, Mary Ellen, "Lawful responses to terrorism", in http://jurist.law.pitt.edu/forum/forumnew30.htm
[101] Op. Cit. Tomuschat, pg. 2
[102] Ibid

intervention in the internal affairs of a State. Hence, the covert actions carried out by the United States (i.e. the mining of ports and attacks on infrastructure) immediately eliminated the possibility of exoneration of guilt in terms of the conditions for the lawfulness of counter-measures.

On the other hand, it is clear that counter-measures are only allowed when a State has been the victim of a previous intervention that does not amount to an armed attack. The Victim State is thus entitled to take *proportionate* counter-measures short of the use of armed force. The fact that the United States was never the direct victim of Nicaragua's border incidents (which would have been materially impossible), or the supply of arms and financial assistance to the opposition, automatically excluded it from legitimately exercising the right of counter-intervention. The *only* States that could have justifiably taken proportionate counter-measures were El Salvador, Honduras and Costa Rica. As the Court affirmed, international law does not warrant a justification to take collective counter-measures, especially not those involving the use of force.

The conclusion that the principle of non-intervention had been violated by the United States for not being entitled to take counter-measures was therefore obvious with regards to the covert actions, as well as to the assistance, financial support, training, supply of weapons, intelligence and logistic support to the Contras. Notwithstanding, it was not clear in relation to the economic measures taken against Nicaragua. Could these actions have been justified as counter-measures? In the Court's viewpoint, the cessation of economic aid in 1981, the pressure put on International Banks to block loans to Nicaragua, the reduction of the quota for sugar imports from Nicaragua by 90 per cent, and the total trade embargo declared on 1 May 1985, could not be regarded as breaches of the customary law principle of non-intervention, but only as a violation of the Treaty of Friendship, Commerce and Navigation of 1956. However, they could have plausibly been justified as counter-measures, since they did not involve the use of force and were taken in response to a previous aggression from Nicaragua against El Salvador. The ICJ, however, did not embark in the analysis of this option, which

seemed more sound than justifying the covert actions as counter-measures. This constitutes another shortcoming of the Court's reasoning.

It is clear that the Court's determination of the infringement of the principles of non-use of force and non-intervention followed an inductive analysis that required discharging all the possible justifications that could exonerate the United States from the responsibility for its activities in Nicaragua. This leads to wonder whether the illegality of intervention is always determined by the absence of justifying reasons. Although the general rule is that of non-intervention in the internal affair of States, when an intervention actually occurs, the process of assessing the interference seems to require the examination of all the possible justifying arguments, before condemning the incursion. Thus, an intervention is not censured as immediately unlawful; it is unlawful after it has been established that there was not a good reason to validate it.

An intervention that involves the use of force is clearly banned by the UN Charter, unless it is done on the grounds of self-defence. Therefore, the study of an intervention of this kind demands the dismissal of the exoneration causes for the unlawful use of force, in order to be framed as an illegal intervention. Of course, there are cases in which the violation is blatant and manifest, and it can be classified an reproached straight away as a clear a infringement of the rule. But these are the exception. Most cases fluctuate in a grey zone that demands the examination of the behaviour of both parties, in order to determine the existence or not of justifying causes for their conduct.

To sum up, there are two main flaws in the ICJ's argumentation: firstly, the circular or tautological definition of the concept of "armed attack", which allowed for the Court to neglect Nicaragua's aggression against El Salvador; secondly, the lack of analysis of the actions of economic nature as possible counter-measures, which would have minimized the extent of the violation of the principle of non-intervention, limiting it only to those activities that involved the use of force.

PART TWO
- ANALYSIS OF THE BEHAVIOUR AND MOTIVES OF THE PARTIES -

Despite the United Nations' ban on the use of force and intervention, these practices have continued to be common in international relations. The attitude assumed by the superpowers towards weaker States often leaves the sensation that powerful States only abide by international legislation when it suits their interests. The case in point is a good example, taking into account that "the United States only ceased to take part in the proceedings after a Judgment had been given adverse to its contentions..."[103]

Some authors, like Michael Glennon, affirm that the UN Charter is grounded on a premise that is no longer valid, that is, the assumption that the core threat to international security still comes from interstate violence. On the contrary, he asserts, major threats come nowadays from intrastate conflicts which justify the use of intervention. Hence, when justice calls for intervention, international law must be sacrificed. In this sense, "[e]vents since the end of the Cold War starkly show that the anti-interventionist regime has fallen out of sync with modern notions of justice."[104] Tony Smith agrees with this view, as he argues that much suffering could be spared in the world if the United States, working with other countries through multilateral institutions like the United Nations, the Organization of American States (OAS), or NATO, "took a clear position on what is not tolerable in world affairs and then moved decisively to enforce the collective will in areas where such efforts could produce results."[105]

In other words, these authors contend that intervention should be optional for strong states and international institutions, when they consider it necessary for humanitarian reasons, notwithstanding the mandates of the law. These arguments, however problematic, might only apply to cases where intervention is necessary for humanitarian purposes, not to those where it is undertaken to manipulate the outcome of an internal conflict through the use of force. In the latter, there is no doubt that the principle of non-intervention remains well-established in

[103] Op. Cit. Decision of the ICJ of 27 June 1986, pg. 23
[104] Glennon, Michael J., "The New Interventionism: The Search for a Just International Law", Foreign Affairs, May/June 1999.
[105] Smith, Tony, "In Defense of Intervention", Foreign Affairs, November/December 1994

contemporary international law. Dictatorial interferences in sovereign matters, such as the choice of a political, economic, social and cultural system, and the formulation of foreign policy, are prohibited by international legislation.

The relationship between the United States and Latin America has been particularly problematic, because it has operated under a set of rules almost independent from international law. With the promulgation of the Monroe Doctrine (1823), the United States adopted a policy of intervention in Latin America to protect its vital and national security interests, repeatedly asserting a right to interfere in other States' affairs. [106] During the Cold War, the grounds for intervention were given by the Truman Doctrine of Containment. The continuous appeal to these and other doctrines, however, does not render them legal. On the contrary, it only stresses the fact that when it comes to US interests, the United States has no shame in disobeying international law.

The United States

The facts and arguments described above show that the dispute of the United States was not against Nicaragua itself, but against Soviet expansion. Lying behind the use of covert actions was US protection of its national security interests versus the threat of communism. Covert operations and paramilitary activities were commonly used as part of US national security policy during the Cold War, in breach of the non-interventionist rule.

The Nicaragua case includes several features that fit the description of illegal intervention in the domestic affairs of another State. Indeed, intervention has been defined as a dictatorial or coercive interference by an outside party in the sphere of jurisdiction of a sovereign State. In the present case, US interference in Nicaragua's affairs was both dictatorial and coercive: dictatorial, because the United States is superior to Nicaragua in power; coercive, because it was undertaken against Nicaragua's will. Secondly, the intervention was direct, because through the use of covert actions the US government intended to change Nicaragua's

[106] Op. Cit. Hilarie, pg. 1

communist affiliation. Ideology, whether capitalist, communist, socialist or democratic, falls within the sovereign sphere of States, and no other State or superpower is allowed to violate this right to ideological freedom. Thirdly, the interference was clandestine, as the instruments employed were under the control of the CIA and the NSC staff, and were not even known to the US Congress. Finally, the mining, the attacks on ports and infrastructure, and the arming and training of the Contras entailed the use of force under conditions that contravened the UN Charter.

Loch Johnson suggests there are four thresholds or levels of infringement of international law in the "ladder of covert operations".[107] The first threshold consists on routine intelligence operations that include counterintelligence activities and the adoption of security measures, which do not represent a serious breach of the other State's sovereignty and the non-interventionist rule. The second threshold implies a higher degree of intrusiveness, as it includes actions such as low-level funding of friendly groups, the use of propaganda to manipulate the general opinion on specific issues, surveillance against the target nations through high-altitude reconnaissance satellites, etc. Although these activities are commonly accepted, they contravene the principles of sovereignty and non-intervention. Threshold three purports more dangerous covert actions, i.e. close-up, on-the-ground, direct operations against the desired target, including paramilitary operations, which are openly contrary to international law. Finally, in threshold four the lives of innocent people are placed in extreme jeopardy, due to the damages covert operations might cause. Actions such as the supply of sophisticated arms to rebel factions, major hostage-rescue attempts, torture, major secret wars, and assassination plots are comprised in this level. Obviously, all of them are blatant violations of the basic rules and principles of international law.

The actions directed by the United States against Nicaragua range between thresholds one and three. Therefore, they entail a clear breach of international law by the United States. Furthermore, none of the possible exceptions to the principle of non-intervention apply to the case. There was no invitation from Nicaragua to the United States to interfere in its internal

[107] Op. cit. Johnson, pg. 61

affairs; no collective authorization was given by the Security Council; and finally, the intrusion was not undertaken for humanitarian reasons. More importantly, the argumentation of the ICJ proved that the United States had neither the right to exercise collective self-defence, nor to resort to counter-measures, since the conditions were not met for these legal features to apply.

Consequently, US actions contravened the UN Charter (Article 2-7), the Declaration on the Granting of Independence to Colonial Countries and Peoples (Articles 2, 4 and 7), the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, the Declaration on Principles of International Law, Friendly Relations and Cooperation, and the Declaration on Principles of International Law. Unfortunately, due to the absence of mechanisms to enforce international law, and due to the place the United States occupies in the United Nations and the Security Council, this breach had no material consequences, but only theoretical costs in terms of compliance with the Court's decision.

The origins of US counter-insurgency policies in Latin America lie in the particular values set out by the Monroe Doctrine. In 1823, President James Monroe addressed a message to Europe in which he established the basic principles that would later become the "weapons of American expansion as well as hemispheric defence."[108] This message, known as the Monroe Doctrine, was based on fears that Europe would intervene in the Latin American States that had just declared their independence from European empires. The United States was determined to support Latin America's pursuit of autonomy, hoping to become the leader of a republican hemisphere where trade would flourish. At the end of the nineteenth century the United States began to play a notable role in the Latin countries of the Americas.

The aim of the Monroe Doctrine was the protection of US peace and security. It had three basic tenets: non-colonization, non-intervention, and isolation. The non-colonization clause established that former European colonies, now American States, could not be subjected to

[108] Bradford, Perkins, "The Creation of a Republican Empire 1776 – 1865", The Cambridge History of American Foreign Relations, Volume I, [New York, Cambridge University Press, 1993] pg, 168

future colonization.[109] The non-intervention canon was a warning to Europe not to intervene in the internal affairs of the American States which had just declared themselves independent.[110] The isolationist principle proclaimed that the United States would refrain from taking part in European politics, implying that Europe should henceforth abstain from intruding in US domestic affairs.[111]

The policy was, therefore, "America for the Americans". However, it was far from being a proclamation of complete solidarity with Central and South America.[112] The acknowledgment of the new States had several objectives: establishing US influence to undercut Europe, assisting commerce, and encouraging the growth of republicanism. In this sense, a British paper of that time commented: "The plain Yankee of the matter is that the United States wish to monopolize to themselves the privilege of colonising (...) every (...) part of the American Continent."[113]

The first successful attempt to enforce the Monroe Doctrine was in 1898, with the intervention in Cuba during the revolt against Spain. As a result of the victory, the United States gained control over Puerto Rico, Hawaii and the Philippines. Cuba was granted independence, but remained a US protectorate until the 1930s. A series of interventions followed thereafter.[114] In 1905, an intervention took place in the Dominican Republic to prevent Germany, France and Italy from collecting the debt owed to them by the Dominican government. This intervention produced the "Roosevelt Corollary" to the Monroe Doctrine, which asserted "the US right to

[109] Literally, the message reads: "The American continents, by the free and independent condition which they have assumed and maintained, are henceforth not to be considered as subjects for future colonization by European powers." In Bingham, Hiram, The Monroe Doctrine, an obsolete shibboleth, [New Haven, Yale University Press, 1905] pg.3

[110] The Doctrine states: "...we could not view any interposition for oppression [Latin American states] or controlling in any other manner their destiny by any European power, in any other light than as the manifestation of an unfriendly disposition towards the United States." Ibid

[111] "In the wars of the European powers, in matters relating to themselves, we have never taken any part, nor does it comport with our policy so to do." Op. Cit. Bradford, pg. 165

[112] Noticeably, the United States only decided to recognize the most solidly established Latin American regimes (Argentina, Chile, Gran Colombia, Mexico, and Peru) once Florida, a Spanish colony, was in its hands.

[113] Op. Cit. Bradford, pg. 160

[114] For example, the United States supported a rebellion in the Colombian province of Panama, which led to Panama's independence in 1903. In return for its aid, the US was conferred all the rights over the Canal Zone, and assumed control over Panama's finances and foreign relations. Hence, President Roosevelt's declaration: "I took the Isthmus."Op. Cit. Hilarie, pg. 3

take over as trustee in bankruptcy the assets of delinquent debtor countries in the hemisphere, thereby preventing intervention by European creditors."[115] As a consequence of the Corollary, the United States occupied the Dominican Republic and Haiti. It also established a protectorate over Nicaragua, intervened in Mexico, and subsequently intervened in Panama in 1925. This coercive diplomacy toward Latin America was called the "big stick diplomacy".

Thus, the Monroe Doctrine substituted European intervention for North American intervention. At The Hague Conferences of 1899 and 1907, Latin America tried to force the adoption of measures to make certain types of interventions illegal. However, the measures were rejected. The ban on intervention appeared once again in the creation of the League of Nations, but no mechanism was determined to prevent great powers' intervention in small States. The Roosevelt Corollary led to various declarations against intervention from different Latin American sectors. The Calvo Clause, for instance, attempted to restrict the use of interventions for the settlement of investment disputes or the collection of private debts. Then, the Foreign Minister of Argentina, Luis M. Drago, stated in 1907 that the failure of a State to meet the payment of its public debt did not purport a right of intervention. This declaration became known as the Drago Doctrine, and had great influence on the development of international law with respect to non-intervention.

The Montevideo Convention, signed in 1933, included an Additional Protocol from 1936 on non-intervention. This Convention was the basis for the "Good Neighbour" policy propounded for some years by the United States. After the Second World War, the Organization of American States (OAS) was created to harmonize the relations between the United States and Latin America. Intervention was prohibited both by its Charter and by the Rio Treaty, and was reaffirmed by the UN Charter. Notwithstanding, it became inoperative with the outbreak of the Cold War.

Besides the Monroe Doctrine, the United States designed the Truman policy of containment to prevent the spread of communism. This policy entailed the use of intervention against any

[115] Ibid, pg. 4

threat to US national security. The concept of national security, a priority for the superpowers after World War II, supported the use of military, economic and political power in order to ensure the survival of the State. Among other measures, it included rallying allies, isolating threats, using intelligence services and espionage to collect and protect classified information, in short, it entailed the use of covert actions.

There were opposing views on the use of covert operations as a way of protecting the national security against a communist threat in Nicaragua. On the one hand, there were the nationalists who accepted any use of secret intelligence agencies in defence of the nation-state. This position had been expressed years before in the Doolittle Report to the Hoover Commission in the 1950s. It stated: "[w]e must learn to subvert, sabotage and destroy our enemies by more clear, more sophisticated and more effective methods that those used against us."[116] On the other hand, there were those Kantians – Kant posited: "do no evil, though the world shall perish"[117] –, who affirmed that the United States "ought to discourage the idea of fighting secret wars or even initiating most covert operations (because) when (...) we mine harbours in Nicaragua (...) we fuzz the difference between ourselves and the Soviet Union (...) we make a major mistake, and throw away one of our great assets."[118] Members of the NSC staff who insisted on funding and arming the Contras against Congress' prohibitions clearly assented with the former view.

The concept of national security was thus criticised for blurring the boundary between domestic and foreign affairs, and for serving as a justification for neo-colonialism during the Cold War period. Any threat to national security justified an intervention, open or clandestine, with total disregard for the principles of sovereignty and of non-intervention. In this sense, Buzan expressed: "the concept of national security does not lend itself to neat and precise formulation. It deals with a wide variety of risks about whose probabilities we have little knowledge and of contingencies whose nature we can only dimly perceive."[119] The use of

[116] Op. cit. Johnson, pg. 60
[117] Ibid
[118] Ibid, pg 71
[119] Buzan, B., People, States and fear: An Agenda for International Security Studies in the Post – Cold War Era, [New York, Harvester Wheatsheaf, 1994], pg. 16

covert operations as a means of protecting the national security poses a similar problem, as it is difficult to measure the forces that the secret activities may unleash. For instance, the United States never imagined what would become of Iran after aiding the Shah to come into power. Likewise, they could not foresee that Osama bin Laden, trained by the CIA to fight against the communist-led government of Afghanistan during the Cold War, would become one of United States' worst enemies. Thus, apart from erasing the limits between internal and foreign issues, national security and the use of covert actions as a tool to defend it presents several risks due to the uncertainty of the consequences. In the case of Nicaragua, US activities ultimately strengthened the FSNL, and gave it increased legitimacy and support.

When revolution occurred in Nicaragua, the United States argued that prevention of the spread of communism was a matter of "regional security", thus seeking the "regionalization" of the conflict through the involvement of other Latin American countries, namely Argentina and Venezuela. Yet, the Falklands ("Islas Malvinas" for the Argentinians) war in 1982 led to the withdrawal of these countries' assistance. Understandably enough, Argentina felt betrayed by US support of Great Britain during the war for the islands. [120]

The United States' next strategy was to make the revolutions in Nicaragua and El Salvador a Central American problem. This approach brought about an increase of economic aid to friendly regimes, i.e. Guatemala, El Salvador, Honduras and Costa Rica, and the strengthening of their military capacities. Along with this aid, the methodology included the implementation of covert operations in Nicaragua, and the imposition of economic, military and diplomatic sanctions on Cuba. The invasion of Grenada in 1983 helped to emphasize US leadership in the region, and to project the image of the anti-communist discourse.

The "Kissinger Report", which came out in January 1984, made an evaluation and recommendations on the Central American crisis. The report suggested a change of strategy in Nicaragua: the "passive containment", i.e., the aid to friendly governments and support of counter-revolutionary groups, should be replaced by an "active containment" or "low intensity

[120] See Mazzei Geraldine, United States Counterinsurgency Policy in Latin America: its origins, methods and effects, [Connecticut, Southern Connecticut State University, 1986]

war", which involved more drastic and direct actions against rebels. Accordingly, Nicaraguan harbours were mined and infrastructure was blown up.[121] Reagan's determination to support the Contras required a hard campaign of legitimization of these counter-revolutionary groups in the US Congress. In a speech given on 2 July 1985, he compared the Sandinistas to the governments of Iran, Cuba, Libya and North Korea, accusing them of constituting a terrorist government.[122] Paradoxically, he ended up financing the Contras with the profits from the sales of arms to the regime of the Ayatollah Khomeini, a sponsor of international terrorism, according to the United States.

The judgement of the ICJ on the merits came up at a time when the Iran-Contra affairs were being unveiled in the United States, polarizing Congressmen and public opinion against the administration. The scandal, however, was legal rather than ethical. Those who opposed the policies employed by the United States did not argue that it was wrong to support the Contras, or unethical to sell arms to Iran, but that both were kept a secret from Congress and from the rest of the executive. The fact that some few officers of the administration attributed themselves the power to conduct the main aspects of foreign policy, with total disregard of the Congress, was symptomatic of the weaknesses of the Constitution. In Draper's words,

> "The Iran-contra affairs were not an aberration; they were brought on by a long process of presidential aggrandizement, congressional fecklessness, and judicial connivance. If anything is to be gained from this costly experience, it should be the belated realization that this process has put the Constitution in danger."[123]

Undoubtedly, the United States committed several mistakes throughout the whole process of deciding on Nicaragua's affairs, the intervention itself, and the proceedings before the Court. But perhaps the greatest legal error was the termination of the declaration of acceptance of the jurisdiction of the Court in relation to Central American countries a few days before the filing of the application by Nicaragua. Theorists, journalists, politicians and authors in general agree

[121] Lucrecia Lozano and Raúl Benítez assert that the doctrine of the War of Low Intensity became official when Reagan assumed the presidency of the United States for the second period in January 1985. Op. Cit. Benitez, Lozano y Bermúdez, pg. 64
[122] Ibid, pg. 68
[123] Op. Cit. Draper, pg. 582

in that, with such action, the United States government unequivocally accepted its culpability. This gave Nicaragua a political victory, as the attention of the media was immediately drawn towards the application, giving it a higher degree of credibility. The lawsuit received unimaginable support from all sectors, including the international community. Furthermore, right after the first decision of the Court on 10 May 1984, which granted the provisional measures requested by Nicaragua, the House of Representatives voted against financial aid to the Contras.

As has already been suggested, perhaps the real significance of the ICJ' decisions is precisely that it propelled the opposition against the United States executive's actions. The judgment on the merits against the United States provoked a strong reaction from those who believed in legality as an essential pillar of law. Pressure increased for the ceasing of US intervention in Nicaragua, and for an urgent change in the course of action. Abram Chayes, the American lawyer who represented Nicaragua in the case before the ICJ, affirmed he had accepted the case "to hold America to its own best standards"[124], and to "force a change in the debate by holding up a mirror to America's face and challenging its image of itself as a law-abiding nation proud of its role in creating, supporting and defending the international legal order."[125] His strategy worked, at least with regards to Nicaragua, but the ICJ's decision did not hinder the United States from intervening later again in Panama, in 1989.

The case of Nicaragua might lead to question the status of the ICJ in US politics. Yet the fact is that the United States had itself appealed to the Court during President Carter's administration to solve a dispute against Iran. Certainly, in 1980 the ICJ was asked to declare that Iran had infringed the principles of international law, due to the seizure of the US Embassy in Tehran. What happened then in the Nicaragua case? While the case against Iran was in the US interests, the Nicaragua case was not... That was the reason behind US non-compliance with the Court's decisions. But the US government was not totally indifferent to the existence of outstanding legal issues before the ICJ. The decision of President George

[124] Op. Cit. Reichler, in http://www.fhe.com/files/tbl_s47Details%5CFileUpload265%5C76%5CNicaraguaWorldCourt2001.pdf
[125] Ibid, pg. 23

H.W. Bush to negotiate an aid package with Violeta Chamorro in exchange for Nicaragua's withdrawal of the demand for reparations constituted an understated recognition of the Court's authority.

What was the logic and rationale that guided the US behaviour towards Nicaragua and the proceedings before the ICJ? The logic was undoubtedly that propounded by Morgenthau's realism.[126]According to this theory, the rules for intervention should be deduced "not from the abstract principles which are incapable of controlling the actions of governments, but from the interests of the nations concerned and from their practice of foreign policy reflecting those interests".[127] This view proclaims that intervention is just another manifestation of the fact that weak States must submit to the power of the strong States.[128] Hence, "intervene we must where our national interest requires it and where our power gives us a chance to succeed".[129]

Morgenthau affirmed that the fiascos of the Bay of Pigs, Vietnam, and the Dominican Republic were the result of the government's failure to decide whether it was more important to succeed in the intervention, or to prevent a loss of prestige by not complying with the international legislation on non-intervention. Applying this logic to Nicaragua, realists might affirm: had the United States settled upon the former, the Sandinista regime would have been overthrown, regardless of the negative reactions from the rest of the world; had it chosen the

[126] Morgenthau's conception of morality is quite problematic, because it postulates a seemingly moral dichotomy, distinguishing between moral commands that follow "universal rules", and the requirements of political action as two different, and even incompatible ethical levels. Indeed he says: "Both individual and state must judge political action by universal moral principles, such as that of liberty. Yet, while the individual has a moral right to sacrifice himself in defence of such moral principle, the state has no right to let its moral disapprobation of the infringement of liberty get in the way of successful political action, itself inspired by the moral principle of national survival". Thus, on the one hand, he recognizes the existence of abstract moral laws that govern the universe, and that must be followed by individuals in their private life, and on the other, he contends that political "morality" does not observe those universal moral laws, as it is guided by national interest. Morgenthau's realism denies the "universal" character of moral law, by proposing another type of morality, the political, that must be observed by decision-makers. Morgenthau, Hans, Politics among Nations, the Struggle for Power and Peace, [New York, Alfred A. Knopf, 1973] pg. 10

[127] Op. Cit. Morgenthau, "To Intervene or not to Intervene", pg. 429

[128] See Little, Richard, Intervention – External Involvement in Civil Wars, [New Jersey, Rowman and Littlefield, 1975]

[129] Op. Cit. Morgenthau, "To intervene or not to intervene", pg. 436

latter, it would have definitely refrained from intervening altogether. Philip Nel has soundly called this attitude "cynic".[130]

Many authors agree that the foreign policy of the United States amounts to an ideology of national interest,[131] which sees as inevitable the involvement in the security and stability of the whole world. Whether the defeat of communism, the need to fight drugs, the war against terrorism, or the non-proliferation of nuclear weapons, some justification can be found to intervene in the internal affairs of other States. Ultimately, it all comes down to one single argument: the defence of US interests. In this sense, "threats to American operations overseas (...) are naturally taken seriously by the US government".[132] From Theodore Roosevelt to George W. Bush, all US presidents have shared the hegemonic belief that the United States has both "the right and the might" to control internal events all over the world regardless of international law and national sovereignty.[133]

But, is the notion of national interest a moral concept at all? David Welch opines that the notion of "national interest" is void, for it is useless both as analytical tool and as guide to foreign policy making.[134] The concept provides nothing but indeterminate policy guidance, and it is fallacious because it hides whose interest it actually denotes. It masks which values

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[130] Nel, Philip, "Morality and Ethics in International Relations", Power, Wealth and Global Equity, [Juta Academic, 2006], pg 44

[131] According to Melvin Gurtov, the ideology of the national interest is founded in three main tenets: a) the United States' domestic tranquillity depends on the security and stability overseas; b) the security and stability of the "forces of freedom" depend on the United States' willingness to carry out its mission and responsibilities; c) the United States can only achieve its mission and security responsibilities as long as it has its ability to intervene in the internal affairs of other peoples. Op. Cit. Gurtov, pg. 5

[132] Girling, John, America and the Third World, Revolution and Intervention, [London, Routledge &Reagan Paul Ltd., 1980] pg. 139

[133] Kornbluh, Peter, "Nicaragua", in Op. Cit. Schraeder, pg. 235

[134] One stream of thought, represented by George Kennan, has said there is no necessary relation between national interest and morality. Realists, represented by Morgenthau, believe that what is in the national interest *is* the moral thing to do, consequently, the national interest *is* a moral concept in itself. For others, although morality and national interest are different in the logical and theoretical sphere, they coincide in the practice, as for Woodrow Wilson, who thought that "in the long run the best way of securing peace and prosperity is always to seek to do what is right". Finally, there are those, like Reinhold Niebuhr and Stanley Hoffman, who sustain that, although the national interest is a concept with moral content, a foreign policy based in the national interest can easily fail the test of morality. In this sense, "there are times when a diligent pursuit of one's own country's security or welfare would contravene higher moral duties." In Welch, David, "Morality and the 'National Interest', in Valls, Andrew, Ethics in International Affairs, [New York, Rowman and Littlefield Publishers, inc., 2000] pg. 3

are being promoted by statesmen, and which are being sacrificed.[135] In this sense, the idea of national interest "prevents us from acknowledging the role that morality plays in foreign policy – in both our own foreign policy and that of other States. This masking effect makes it more difficult for States to pursue moral goals and also represents a permissive cause of international conflict".[136]

The problem with US foreign policy, according to Samuel Huntington, is that there is a gap between the ideals in which North Americans believe, and the institutions that embody their practice. He contends that institutions that handle foreign policy have functional imperatives that conflict with the liberal-democratic values of what he calls the "American Creed". This, he argues, has led to "the contradiction between enhancing liberty at home by curbing the power of the American government and enhancing liberty abroad by expanding that power."[137] The Iran-Contra affair could certainly be understood within this framework. It could be argued that the attempts of the Congress of restricting the executive's power in relation to covert actions, and the stubbornness of the executive of supporting the Contras, even if it meant the disregard of the Congressional mandate, gave rise to the conflict.

Whether it is a problem of the application of realism, the void of the notion of national interest, or the gap between ideals and institutions, the truth is that the United States follows a logic that collides with the principles laid by international law, and that this is increasingly leading the world towards more and more anti-American sentiments.

Nicaragua

It has been said that what makes this case unique are not the facts themselves, but rather Nicaragua's decision to take the conflict to the ICJ, and the impact the Court's decision had in

[135] Ibid, pg, 4
[136] Ibid, pg. 9
[137] Huntington, Samuel P., "American Ideals versus American Institutions", in Ikenberry, John, American Foreign Policy, [New York, Harper Collins Publishers, 1989] pg. 255

international law. Certainly, the intervention in Nicaragua raised several questions of law and politics. In adjudging the case, the Tribunal had to clarify the scope of the principles of non-intervention and non-use of force, the use of the right of collective self-defence and the right to resort to counter-measures. The decision to hear the case had a high political impact, because the ICJ took on the task of examining US foreign and national security policies, in a region that had, until then, been considered of total US influence. For the first time in the history of the ICJ, the Court was asked to decide upon an ongoing armed conflict between the United States and a Latin American country. Moreover, it was the first time that the Court was invited to hear a case against the United States.

Yet, the importance of Nicaragua's step of trusting the matter to the ICJ does not take from the fact that the lawsuit also served several practical purposes. The Sandinistas used the years of the proceedings before the Court to gain military superiority. The lawsuit prevented a direct military intervention similar to the one performed in Grenada, stopped the funding of the Contras by changing the minds of US Congressmen, and appeased the internal political atmosphere in Nicaragua after the Sandinista revolution. Although the Contras continued their attacks, the Sandinistas had the capabilities to endure them, thanks to the provisional measures ordered by the Court, and the weakening of the support given to rebel groups by the US Congress.

The Sandinistas' support to the guerrillas in other Central American countries was undisputable. They had facilitated the unification of several guerrilla groups in Guatemala,[138] and had supported the creation of several insurgent groups in Honduras. Daniel Ortega himself avowed before to Court to have known about arms shipments directed to the insurgents in El Salvador.[139] Hence, a judgment of the ICJ in favour of Nicaragua's pleadings somehow cleaned all these records, and gave further legitimacy to the Sandinistas at the international level. The application shifted the centre of discussion from the usual question of whether the

[138] Nicaragua had helped the insurgents in Guatemala to the extent that the declaration of unity was signed in Managua in 1980.
[139] See Castillo, Donald, Gringos, Contras y Sandinistas, [Bogotá, TM Editores, 1993] pg. 253 - 255

Sandinistas were a communist movement that threatened US security, to whether US interests were served by funding the Contras against domestic and international law.[140]

According to the lawyers retained by Nicaragua, the vision of the Sandinista government as radical, communist, and allied of the Soviet Union and Cuba was a manipulation of Reagan's administration to justify its actions. Nicaragua, they contend, only requested the aid of the Soviets when the Sandinistas realized they could not fight the United States by themselves. Peter Schraeder agrees with this view when he points out: "US paramilitary support for the contras has forced the Sandinistas to rely more heavily on Cuban and Soviet support and advisers, the exact opposite of US foreign policy objectives in the region."[141]

Conversely, other authors stress the geo-strategic importance of Nicaragua for the Soviet Union, finding some reason in US actions. Donald Castillo, for instance, argues that the airport of Punta Huete was especially adapted by the Soviets for MIG Soviet planes to make military manoeuvres, as well as some harbours in the Pacific coast of Nicaragua, which had access to the American coasts of California.[142] These facts indicate that the United States had reasons to fear that Nicaragua would become a second Cuba, with the dangers of another missiles crisis like the one that occurred in 1962.

Nicaragua's lawyers played a central role in convincing the Sandinistas that in order to have a favourable decision from the ICJ, they needed to suspend any aid to the El Salvador insurgency, avoid restrictions on the civil liberties of Nicaraguan citizens, and implement a democratic government as soon as possible. These actions, they assured, would be fundamental to have the judges' sympathy, and to gain the votes they needed in the US Congress. The Sandinistas were therefore not free of some degree of opportunism and self-

[140] When the application before the Court was filed in 1983 the aid to the Contras had significant support from the United States Congress. The Nicaraguan government had looked for solutions at the multilateral and bilateral levels: multilaterally, it had declared its support to the Contadora Process, an attempt to appease Central America and the relations between Nicaragua and the United States; bilaterally, it had proposed solutions to reach peace between both parties. However, these endeavours had failed. The United States government had no interest in those peace initiatives.
[141] Op. Cit. Schraeder, pg. 128
[142] Op. Cit. Castillo, pg. 250

interested aims in following the course of actions they did. But even if the immediate motives underlying Nicaragua's lawsuit were not inspired in the highest moral imperatives of respect of international law, it is undeniable that the lawsuit had great impact on the way interventions have been perceived thereafter in international law.

Honduras, Costa Rica and El Salvador

The attitude of Nicaragua's neighbours cannot be left aside when assessing the development of the case. Naturally, most criticisms devolve upon the United States, because of the visibility of its errors and its negligence in assuming the judicial decisions of the ICJ. Nonetheless, Honduras, Costa Rica and El Salvador are not free of guilt. Honduras decisively supported both the United States and the Contras. It participated in neighbouring conflicts carrying out joint operations with the Salvadorian army, sometimes engaging in combat inside El Salvador, and allowing a massive US military build-up on its territory in order to perform covert activities in Nicaragua.[143] Honduras was perhaps the most decisive ally of the United States and the right-wing movements in Central America.

Likewise, Costa Rica and El Salvador took the chance to benefit from the conflict in Nicaragua. Their alignment with the United States granted them a great deal of economic aid, and they certainly cooperated in the performance of the covert actions. Costa Rica not only provided its territory for the operation of one of the Contras' fronts, but also established an airstrip for their supply. This airstrip was closed down by Oscar Arias when he came to power. El Salvador, on the other hand, was critical for the little defence the United States presented to the Court, as it alleged it had been attacked by the Sandinistas. Thus, the United States was not alone in its determination to undermine the Sandinista government. It had key allies in the quest to eliminate any seeds of communism in the region.

[143] Berryman, Phillip, Inside Central America, [New York, Pantheon Books, 1985] pg. 88

International Court of Justice

The judgment of 27 June 1986 has shortcomings, as well as highly positive aspects. On the one hand, the Court made the effort to respect the principle of equality of the parties to the dispute, by analysing, not only the claims adduced by the United States in its counter-memorial on jurisdiction and admissibility, i.e., collective self-defence, but also the possibility of counter-measures as a response to Nicaragua's actions, even though the United States never appealed to this justification. Nonetheless, the evaluation of the evidence, as well as the reasons asserted to declare the violation of the principles of international law, seem sometimes biased in favour of Nicaragua.

For instance, as explained before, the Court dismissed the justification of collective self-defence based on formalities, that is, the absence of the declarations by Honduras, Costa Rica and El Salvador of being under armed attack, and the absence of a request of help to the United States by Honduras and Costa Rica. The fact that Nicaragua accepted to have given support to the insurgents in El Salvador was hardly taken into account by the Tribunal. Similarly, the trans-border military incursions into the territories of Honduras and Costa Rica, and their imputability to Nicaragua, were events almost ignored by the ICJ, arguing that the evidence available did not prove that these actions amounted to an armed attack.

The contentions on the lack of conditions for the exercise of collective self-defence, and the consequent unlawful use of force, reflect directly on the arguments regarding non-intervention, since the case had to do with intervention involving the use of force. The ICJ noted that the OAS Charter includes a principle according to which "an act of aggression against one American State is an act of aggression against all the other American States." Furthermore, the Inter-American Treaty of Reciprocal Assistance establishes:

> "[a]n armed attack by any State against an American State shall be considered as an attack against all the American States and, consequently, each one of the said Contracting Parties undertakes to assist in meeting the attack in exercise of the inherent right of individual or collective self-defence..."[144]

[144] Op. Cit. Decision of the ICJ of 27 June 1986, pg. 104

However, the ICJ never considered these instruments as constituting enough grounds for the exercise of collective counter-measures, which could have been manifested in the economic measures taken by the United States against Nicaragua. On the contrary, the Court insisted on the need for the request of the State directly attacked as a condition for the exercise of collective self-defence, and on the fact the United States was not the aggrieved State and, therefore, it could not lawfully take counter-measures on behalf of El Salvador, Honduras and Costa Rica.

Besides these substantive flaws, the decision was criticised because even though the Court was legally bound to rule over the facts stated in the grievances, it decided over facts that occurred after the lawsuit was presented, such as the commercial embargo on Nicaragua's products declared in May 1985.[145] Arguably, the Court's position is not surprising in view of the attitude assumed by the United States after the first judgement had been given adverse to its allegations. The US stance was offensive not only towards Nicaragua, but also towards the ICJ.

It is noticeable that despite the fact that the United States was not represented in the proceedings, judge Schwebel took the role of confronting Nicaragua's lawyers and cross-examining witnesses. In his Dissenting Opinion, he asserted that the Court was mistaken in its approach to Article 51 of the UN Charter, in the sense that the right of self-defence can only be exercised "if, and only if, an armed attack occurs."[146] In his viewpoint, although Article 51 only highlights one form of self-defence, this does not negate other patterns of legitimate action in self-defence, for example, in case of preventive war.

As to the aspects worth highlighting, it is compelling to point out, in the first place, the fact that the Court recognized that the principles of international law exist independently from the instruments that include them, thus recognizing they have a separate applicability from treaty-

[145] See Hoyos, Félix, La Corte Internacional de la Haya y el Litigio Nicaragua contra Estados Unidos, [Bogotá, Universidad Nacional de Colombia, 1991]
[146] Op. Cit. Dinstein, pg. 185

law. This statement is fundamental, because it extends the scope of applicability of international law and its principles to cases where treaty-law is in fact inapplicable. According to the Court, the general principles of law have acquired their status through the practice of international relations, and they are an integral part of international law. Consequently, the principles are enough grounds for the ICJ to be competent to entertain a dispute in case they have been contravened. In this sense:

> "The fact that the abovementioned principles, recognized as such, have been codified or embodied in multilateral conventions does not mean that they cease to exist and to apply as principles of customary law, even as regards countries that are parties to such conventions. **Principles such as those of the non-use of force, non-intervention, respect for the independence and territorial integrity of States, and freedom of navigation, continue to be binding as part of customary law, despite the operation of provisions of conventional law in which they have been incorporated.**"[147]

This means that no State can escape from observing the principles. Customary international law is to be obeyed independently from the significance that Conventions, Declarations and Treaties that include them might have in a particular case.

Secondly, in spite of the deficiencies of the judgements, the Court made justice. If US actions had been actually guided by the altruistic aim of aiding other Central American countries against unjustified aggression, the Court's decision would certainly be highly questionable. Notwithstanding, it is clear that the United States was primarily guided by self-interest. Hence, its activities in and against Nicaragua were inexcusable. Following the ICJ's contentions, the support given by Nicaragua to other Central American guerrillas could have been halted by blocking the flow of arms to neighbouring countries. Arming and training the Contras, as well as mining ports and blowing up infrastructure, were neither necessary nor proportionate to that purpose. These activities only proved that US intentions were to overthrow Nicaragua's government.

[147] Op. Cit. Decision of the ICJ of 27 June 1986, pg. 93. The highlight is ours.

Accordingly, Nicaragua won on all issues by margins ranging from 12-3 to 14-1. The Court overwhelmingly rejected US arguments, condemned all forms of support for the Contras (12-3), the direct attacks on Nicaraguan infrastructure (12-3), and the mining of ports (14-1), found that the production and distribution of the manual "Psychological Operations in Guerrilla Warfare" encouraged the Contras to commit acts contrary to general principles of humanitarian law (14-1); and it ordered the United States to pay reparations to Nicaragua for all injuries caused by its violations of customary international law (12-3) and the bilateral treaty (14-1).[148]

Although the United States did not abide by the Court's decision, the Judgment was certainly pivotal in stopping the aid to the Contras, and in creating the climate for the development of negotiations which concluded with a peace agreement in Central America. In this sense, the Court's judgments set off a chain reaction that "helped convince the Congress to cut off funding for the Contras, gave Nicaragua the respite it needed to turn the tide of battle, and forced the White House into egregious tactical errors that ultimately undid its entire policy."[149] Those tactical errors were the continuance of the support to the Contras through third countries, private funds, and the profits from the sale of arms to Iran.

There were those who criticized Nicaragua's lawsuit arguing that it had only put the Court on the spot, making its weaknesses evident. Thus, they claimed: "When superpowers and their vital interests are involved (...), 'judicial pusillanimity' is called for."[150] In other words, they felt there was no doubt that a superpower like the United States would continue to pursue a foreign policy considered vital to its national interests, despite the ruling of the ICJ, which had no means of enforcement. This argument is nothing but absurd, since the very nature and purpose of the ICJ is precisely to provide the space where States can solve their disputes on equal conditions. Indeed, "**it is only in the Hague that Nicaragua can face the United States**

[148] Op. Cit. Richler, pg. 43
[149] Ibid, pg. 35
[150] Ibid, pg. 39

on equal terms. It is the only forum where the outcome is not predetermined by the disparities of military and economic power between the parties."[151]

With relation to ethics, the stress put by the Court on the superiority of the principles of international law over treaty and domestic law shows traces of natural law thinking and idealism.[152] These streams of thought are characterized by the conviction that the same code of morality applies for individuals and States. For idealists, the pursuit of good is a matter of right reasoning. Ethical values have universal validity, and therefore, they transcend moral practices of particular communities, depending mainly on reason. In the same line of thought, the Court's contentions create the ground for a set of values established by international law, and highlight the necessity to comply with rules independent from the political situation and contingent needs of particular historical moments.

It is not surprising that the Court upholds this viewpoint. The defence of international law and its principles is, ultimately, a vindication of the values that have been considered reasonable and desirable in the ambit of the "*ought to be*". Thus, the fundamental principles established in the different international instruments (the UN Charter, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, the Declaration on Principles of International Law, Friendly Relations and Cooperation, the Geneva Conventions, among others) are believed to have universal application, and the ICJ obviously advocates for their compliance and respect.

Consequently, the ethics propounded by the ICJ collides with the moral theory that guides US foreign policy. While the former promotes the need to obey the universal values set out by international law, the latter pursues its self-interests, whether or not they coincide with

[151] Ibid. Highlight is ours.

[152] Kant, with his essay *Perpetual Peace,* was particularly influential to this stream of thought in the aftermath of World War I, as it inspired Woodrow Wilson's fourteen points, and the creation the League of Nations. According to Kant, states are moral entities urged to take all the necessary measures for the achievement of peace, including, among other things, refraining from secretly instigating rebellions, and interfering by force in another state. Kant, Immanuel, Perpetual Peace, [New York, Columbia University Press, 1939], pg. 6

international rules. As Johnson puts it, "the debate continues between realists and moralists over the proper balance between protecting the nation's interests abroad and maintaining its virtue. (...) Yet the influence of the moralist perspective in the United States should not be overestimated."[153]

The decision of the ICJ in the case of Nicaragua is still significant in terms of both law and politics. In terms of law, the Court clarified the scope of individual and collective self-defence, and of the principles of non-intervention and non-use of force. Also, the judgment gave a new meaning to self-defence by qualifying it as an "inherent right". In so doing, it extended its applicability from UN Member States to all States, even if they are not members of the UN, since "the existence of the right of self-defence under general customary international law denotes that it is conferred on every State."[154] In terms of politics, the examination of US foreign policy by an international institution, and its condemnation, is a demonstration that when it comes to law, all States are equal, no matter their power or status in the international community.

In short, the United States clearly violated the principle of non-intervention by undertaking military and paramilitary activities in and against Nicaragua. None of the possible justifying causes applied to its conduct, neither regarding the rule of non-intervention, nor the principle of non-use of force. The Monroe Doctrine ("America for the Americans"), and the Doctrine of Containment of communism have served as grounds for the United States to carry out a series of interventions throughout Latin America ever since independence from European empires was proclaimed. Some of these interventions have been direct, others indirect, through the use of covert operations.

The use of covert operations as a way to protect national security has been highly controversial, generating the well-known debate between realists and idealists or moralists. Realists defend intervention wherever national interest requires it and when there are chances of succeeding, whereas moralists support the superiority of international law and condemn the

[153] Op. Cit. Johnson, pg. 139
[154] Op. Cit. Dinstein, pg. 182

use of covert operations whenever it purports the violation of the rule of non-intervention. In practical terms, covert operations are risky because their consequences are difficult to anticipate. In this particular case, the debate around covert actions arose due to the secrecy with which the executive handled Iran-Contra affairs. The fact that members of the National Security Staff acted secretly in violation of Congress' prohibitions made Nicaragua's claims stronger. In addition, the US refusal to participate in the merits phase of the proceedings turned the tide in favour of Nicaragua's demands.

The United States has guided its foreign policy based on notions where the contents are difficult to pin down. National security, national interest, and covert operations are all concepts hard to define and open to many interpretations. At the end of the day they allow for intervention and for the use of force whenever it appears necessary. This case is especially interesting precisely because US foreign policy was questioned by the ICJ, and it gave the Court the opportunity to clarify the scope of the principles of non-intervention and non-use of force, the use of the right of collective self-defence and the right to resort to counter-measures.

Although Nicaragua had been in fact aiding insurgent movements in other Central American countries, the judgments practically ignored this piece of evidence and decided in favour of the Applicant State. The attitude of the United Stated must have had a lot to do with the hardening of the ICJ's position. The Court used the ambiguity of the definition of armed attack to dismiss the contention that there had been trans-border military incursions into the territories of Honduras and Costa Rica by the Nicaraguan government. Likewise, it overlooked the fact that Nicaragua had been giving arms to the Salvadorian insurgents. The possibility that the economic sanctions imposed by the United States on Nicaragua could have been taken on the basis of the principle of the OAS Charter according to which "an act of aggression against one American State is an act of aggression against all the other American States" was also discarded by the ICJ. The absence of a request by the aggrieved States as a condition for the exercise of collective self-defence, and the fact that the United States was not itself the aggrieved State were the basis for this decision. The role Honduras, Costa Rica and El

Salvador played in supporting the US intervention cannot be underestimated, for without their aid, the United States could not have carried out covert activities in Nicaragua.

Notwithstanding, the judgments became a landmark in international law due to their treatment of the principles of non-use of force and non-intervention. The Court recognized that the principles of international law exist independently from the instruments where they are established, thus allowing for their autonomous application. Moreover, the decisions demonstrated that the legal realm provides a space, perhaps the only one, where all States can be equal, despite their differences in power. The idealistic view held by the Court collides with the realism defended by the United States. Each of them reflects a distinct ethical paradigm of international relations.

CONCLUSIONS

In the conclusions, we must address the questions posed as criteria of judgment to guide the analysis of the case. The judgments of the ICJ are not shielded against criticisms and free of flaws. Not only the decisions ruled over facts that occurred after the lawsuit was presented, but they reveal some argumentative deficiencies, such as the puzzling conception of "armed attack", the insufficient weight given to the evidence against Nicaragua, and the lack of examination on economic sanctions as possible collective counter-measures.

Nevertheless, these shortcomings do not undermine the legitimacy and validity of the judgements for several reasons. The ICJ is an institution of international law. As such, its decisions are framed within the principle of legality, according to which the decisions taken by legitimate authorities are legal, unless proven otherwise. If they are legal, they are compulsory and, consequently, they should be obeyed by international actors. The lack of a unified system of law, an organized administration of sanctions, and tribunals with compulsory jurisdiction, makes the system of international law quite vulnerable to the will of the strongest States. However, the fact that international law does not have the support of a system of sanctions does not imply that it is not a proper system of law. Some authors affirm that international law is a "horizontal legal system", constituted by formally equal participants, as opposed to a "vertical legal system", represented by the hierarchical arrangement of norms enforced by an institutional hierarchy.[155] In the decentralized international system, the conduct of States and international actors in accordance with international rules *is* compulsory, even if there is no way to make it enforceable. Any deviation, including the disobedience of an ICJ's judgment, constitutes an infringement of international law and is, therefore, reproachable by the international community.

It is noteworthy that, for most of its part, the ICJ has been successful in terms of compliance with its decisions.[156] Only three cases stand out as cases of non-compliance: the Corfu

[155]Op. Cit. Little, pg. 20
[156] Hathaway, Oona, "Is International law Useful?", in http://www.legalaffairs.org/webexclusive/debateclub_intl0105.msp

Channel Case[157], the United States Diplomatic and Consular Staff in Tehran[158], and our case in point: Nicaragua v. the United States. The importance of the ICJ lies not only in its judicial function, but also in its legislative contributions to international law. In deciding on cases, the Court has greatly shaped international law and its principles. Although technically a ruling of the ICJ is only binding between the parties, the ICJ's decisions have been treated as binding for all.[159] Thus, even though the ICJ does not prevent international conflict, it at least provides a forum for the peaceful resolution of disputes between States on equal terms. The case of Nicaragua is a remarkable example of this assertion.

Further, the legitimacy of the judgment can be defended on the grounds of justice. The intervention of the United States in Nicaragua was indeed illegal, because it constituted a direct, coercive, forcible and clandestine interference in Nicaragua's internal affairs. None of the exceptions to the principle of non-intervention were applicable to the case, not even collective self-defence or the right to resort to counter-measures. Nicaragua, as well as other Central American countries, namely El Salvador, had gone through long years of a US-supported repressive regime, and it was their right to go through revolutionary processes that would help them achieve autonomy and freedom. Far from being inspired by philanthropic ideals, US actions in and against Nicaragua were guided by self-interested aims. Having another communist regime in its "backyard" (besides Cuba) was certainly not desirable. In order to prevent it, the United States used all the means available, regardless of their legality and moral righteousness. In view of these facts, the Court enhanced the principles of sovereignty, self-determination, non-use of force and non-intervention in the domestic affairs of States.

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[157] This case arose from a lawsuit filed by Great Britain against Albania in 1946, as two British destroyers struck land mines off of Albania. The ICJ ruled in favour of Great Britain, but Albania refused to pay the compensation that was ordered, until 1996, when it agreed to the terms set out by the Court.

[158] In this case, the United States filed a suit against Iran due to the abduction of the American embassy personnel in Tehran. The Court ruled for the United States, but Iran did not comply immediately with the decision. Only in the long run, the two countries reached an agreement on the return of the hostages and for a settlement regarding US freezing of Iranian assets.

[159] See http://lawofnations.blogspot.com/2005/06/reconsidering-reconsideration-of-icj.htmlm

The arguments used to rule the Nicaragua case have permanent validity and application, despite the fact that they were stated during the Cold War. Customary international rules and principles remain pillars of international law. Moreover, the Court's arguments helped clarify the meaning and status of the principles of non-intervention and non-use of force, as well as the scope of the right of collective self-defence and the right to resort to counter-measures in response to a wrongful act by another State. Thus, they stand, and will stand, until the practice and *opinio juris* of States and international actors prove otherwise.

The general rule of non-intervention in the internal affairs of States is, therefore, a fundamental tenet in international law. Yet, the assessment of an intervention will most probably demand the examination of possible justifying causes, before it can be labelled as illegal. This is all the more evident in interventions that involve the use of force, as the first thing that needs to be clarified is whether the intervention was done on the grounds of individual or collective self-defence, or on the basis of the right to take counter-measures. Of course, as has been explained, the actions that involve the use of force fall outside the scope of counter-measures. However, as the expression states, an intervention that involves the use of force might have other non-forcible actions which might be covered by the right to resort to counter-measures, and hence, be justified.

In the case of Nicaragua, the motives and doctrines underlying US activities made all the actions indefensible. The Monroe Doctrine and the Truman Doctrine of Containment, in particular, are declarations of intervention in the States of the American continent that are blatantly opposed to the principle of non-intervention. The case in point is just one example of the fact that whenever US vital interests are at stake, it will most likely invoke void or illegal concepts – i.e. the Monroe Doctrine, the Roosevelt Corollary, the Truman Doctrine of Containment, national security or national interest, "war on drugs", "war on terror", etc. - to justify unlawful interventions.

Phillip Berryman made the following comment about the possible upcoming military intervention of the United States in Nicaragua in 1985, as chances of intervention were

mounting: "...it is hard to imagine how any government installed under the US occupation army could attain legitimacy, even through 'free elections'. Before undertaking an invasion of Nicaragua, policymakers should ask themselves not only how the United States could occupy Nicaragua but, more importantly, how it could leave."[160] Berryman's appraisal definitely brings us back to the present situation in Iraq.

One of the main problems concerning intervention by the United States is that this superpower follows a paradigm (realism) that collides with that of international law (idealism). The defence at all costs of national interest undermines the applicability of the concepts of sovereignty, self-determination, and non-intervention. While weak States usually see interventions in their internal affairs as an abuse and a disrespect of their autonomy, US public opinion and even some scholars conceive intervention as righteous, on the grounds that the values of liberty and democracy have universal application and must be, therefore, imposed in other societies. Samuel Huntington, for instance, is persuaded that the lack of US intervention is what brought dictators to Latin America in the years following the 1930s. In this sense, he affirms:

> "[d]irect intervention by the American government in Central America and the Caribbean came to at least a temporary end in the early 1930. Without exception the result was a shift in the direction of more dictatorial regimes. (...) When American intervention ended, democracy ended."[161]

What Huntington seems to forget is that interventions carried out before the 1930s, namely those under the Roosevelt Corollary, aimed at taking over the assets of debtor countries to prevent Europe from appropriating them, and not at promoting democracy in the region. Moreover, dictators were largely supported by the United States during the era of the "Good Neighbour" doctrine, precisely because they served US interests.

[160] Op. Cit. Berryman, pg. 87
[161] Op. Cit. Huntington, pg. 248

As reproachable as US doctrines and attitudes might be, it would be unfair not to acknowledge that Nicaragua, Honduras, Costa Rica and El Salvador were guided by selfish motivations as well. The measures taken by Nicaragua in order to have a favourable decision from the Court were hypocritical and deceitful, as they were only adopted to win the case. Honduras, in turn, played a decisive role in US support to the Contras. Without Honduras' assistance, the United States could have not carried out covert actions. Similarly, Costa Rica and El Salvador benefited from the conflict in Nicaragua, obtaining economic aid in exchange for their alignment with the United States. Costa Rica provided its territory for the operation of the ARDE, even establishing an airstrip for their supply. El Salvador, on the other hand, was a US ally to the extent that it alleged that it had been under attack by the Sandinistas. Consequently, the United States had great support in its quest to undermine the Nicaraguan government, and to eradicate communism from its "backyard".

The main concern underlying the topic of the principle of non-intervention is to ascertain the role it really plays in international relations, and whether the practice has rendered it a merely nominal, obsolete or decorative figure in international law. To answer this problem, we only need to turn to the general practice of States and international actors, and to their attitude towards the principle and violations to it. Are they indifferent or do they, on the contrary, approve and agree to uphold them? The analysis of the case of Nicaragua, its implications, and the reactions it produced show that the concept of sovereignty, the grounds from where the principle of non-intervention ultimately stems, continues to be fundamental. Therefore, the proscription of intervention remains vital in the normative structure on which international order depends.

Based on the foregoing, it is sensible to construe that the repeated violations of the norm of non-intervention have not led to an erosion of the principle's authority and legitimacy. The world continues to uphold the ban on intervention enshrined in the UN Charter and other regional declarations and resolutions as a fundamental principle of international law. As the Court stated, "principles such as those of the non-use of force, non-intervention, respect for the independence and territorial integrity of States, and freedom of navigation, continue to be

binding as part of customary law."[162] Instead of changing the customary law, US violations have given added relevance to the importance of the norm of non-intervention in international relations.[163] The justification of intervention that proceeds from a supposed right of States to do whatever is necessary to preserve self-interests is inherently destructive of international peace and security.[164] To conclude, we will borrow Hedley Bull's words: "if there is a way forward now, it lies not in seeking to replace the rule of non-intervention with some other rule, but rather in considering how it should be adapted to meet the particular circumstances and needs of the present time."[165]

[162] Op. Cit. Decision of the ICJ of 26 November 1984, pg. 424
[163] Op. Cit. Hilarie, pg. 21
[164] Op. Cit. Bull, pg.190
[165] Ibid, pg. 187

BIBLIOGRAPHY

- Benítez, Raúl; Lozano, Lucrecia; Bermúdez, Lilia, Estados Unidos contra Nicaragua, la guerra de baja intensidad en Centroamérica, [Madrid, Ed. Revolución, 1987]
- Berryman, Phillip, Inside Central America, [New York, Pantheon Books, 1985]
- Bingham, Hiram, The Monroe Doctrine, An Obsolete Shibboleth, [New Haven, Yale University Press, 1905]
- Bradford, Perkins, The Cambridge History of American Foreign Relations [New York, Cambridge University Press, 1993]
- Bull, Hedley, Intervention in World Politics, [London, Oxford University Press, 1984]
- Buzan, B., People, States and fear: An Agenda for International Security Studies in the Post–Cold War Era, [New York, Harvester Wheatsheaf, 1994]
- Carr, Edward Hallett, The Twenty Years' Crisis 1919 – 1939, [London, Macmillan and Co., 1942]
- Castillo, Donald, Gringos, Contras y Sandinistas, [Bogotá, TM Editores, 1993]
- Chomsky, Noam, "Teaching Nicaragua a Lesson", in What Uncle Sam Really Wants, 1993, http://www.zmag.org/chomsky/sam/sam-2-03.html
- Clark Arendt, Anthony, "International Law and the Preemptive Use of Military Force", in http://www.twq.com/03spring/docs/03spring_arend.pdf
- Díaz Barrado, Castor Miguel, "La Prohibición del Uso de la Fuerza en el Derecho Internacional Contemporáneo. Un caso práctico: la Operación Armada de los Estados Unidos de América en la República Árabe de Libia. Abril de 1986", in http://dialnet.unirioja.es/servlet/oaiart?codigo=124632
- Dinstein, Yoram, War, Agression and Self-Defence, [New York, Cambridge University Press, 1995]
- Draper, Theodore, A Very Thin Line, The Iran-Contra Affairs, [New York, Hill and Wang, 1991]
- Galland, Yannick; Rivas, José Antonio, Curso de Derecho Internacional,[Bogotá, Universidad de los Andes, 1999]

- Girling, John, America and the Third World, Revolution and Intervention, [London, Routledge & Reagan Paul Ltd., 1980]
- Glennon, Michael J., "The New Interventionism: The Search for a Just International Law", Foreign Affairs, May/June 1999.
- Graham, Gordon, Ethics and International Relations, [Blackwell Publishers, Oxford, 1997]
- Guido, Amilcar, América Latina y la No Intervención [Barranquilla, Ediciones Norte, 1987]
- Gurtov, Melvin, The United States against the Third World, Antinationalism and Intervention, [New York, Praeger Publishers, 1974]
- Hart, H.L.A., "International Law", The Concept of Law, [Oxford, Oxford University Press, 1994]
- Hart, H.L.A., El Concepto de Derecho, [Buenos Aires, Ed. Abeledo Perrot, 1995]
- Hathaway, Oona, "Is International law Useful?" in http://www.legalaffairs.org/webexclusive/debateclub_intl0105.msp
- Higgins, Rosalyn, "Intervention and International Law", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984]
- Hilarie, Max, International Law and the United States Military Intervention in the Western Hemisphere, [The Hague, Klwer Law International, 1997]
- Hoffman, Stanley, "The Problem of Intervention", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984]
- Hoyos, Félix, La Corte Internacional de la Haya y el Litigio Nicaragua contra Estados Unidos, [Bogotá, Universidad Nacional de Colombia, 1991]
- Huntington, Samuel P., "American Ideals versus American Institutions", in Ikenberry, John, American Foreign Policy, [New York, Harper Collins Publishers, 1989]
- Johnson, James, "Morality and Contemporary Warfare", in http://religion.rutgers.edu/courses/347/readings/intervention.html
- Johnson, James, "Thinking Morally about Intervention", in http://www.pacem.no/1999/2/intervensjon/johnson/

- Johnson, Loch K., Secret Agencies, U.S. Intelligence in a Hostile World, [New York, Yale University Press, 1996]
- Kant, Immanuel, Perpetual Peace, [New York, Columbia University Press, 1939]
- Kanter, Arnold; Brooks, Linton, U.S. Intervention Policy for the Post-Cold War World, [New York, W.W. Norton and Company, 1994]
- Kornbluh, Peter; Byrne, Malcolm, The Iran-Contra Scandal: The Declassified History, [New York, The New Press, 1993]
- Little, Richard, Intervention–External Involvement in Civil Wars, [New Jersey, Rowman and Littlefield, 1975]
- López, Gilberto, "Toda dictadura invita una reacción", in http://news.bbc.co.uk/hi/spanish/specials/2004/nicaragua
- Luard, Evan, "Collective Intervention", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984]
- Marcella, Gabriel, "Security, Democracy, and Development: The United States & Latin America in the Next Decade", in http://www.airpower.maxwell.af.mil/airchronicles/aureview/1986/jul-aug/marcella.html
- Mazzei, Geraldine, United States Counterinsurgency Policy in Latin America: its origins, methods and effects, [Connecticut, Southern Connecticut State University, 1986]
- Morgenthau, Hans, "To Intervene or not to Intervene", in http://dss.ucsd.edu/~bslantch/courses/nss/documents/morgenthau-to-intervene.pdf
- Morgenthau, Hans, Politics among Nations, the Struggle for Power and Peace, [New York, Alfred A. Knopf, 1973]
- Nardin, Terry, "Ethical Traditions in International affairs", in Nardin, Terry; Mapel, David (eds), Traditions of International Ethics [Cambridge, Cambridge University Press, 1992]
- Nardin, Terry; Mapel, David, International Society, [Princeton, Princeton University Press, 1999]

- Nardin, Terry, The Ethics of War and Peace, [Princeton, Princeton University Press, 1993]
- National Security Archive's major microfiche set, The Iran-Contra Affair: The Making of a Scandal, 1983-198, [Alexandria, VA Chadwyck-Healey, 1989]
- Nel, Philip, "Morality and Ethics in International Relations", Power, Wealth and Global Equity, [Juta Academic, 2006]
- O'Connell, Mary Ellen, "Lawful responses to terrorism", in http://jurist.law.pitt.edu/forum/forumnew30.htm
- Reichler, Paul S., "Holding America to its own best standards: Abe Chayes and Nicaragua in the World Court", in http://www.fhe.com/files/tbl_s47Details%5CFileUpload265%5C76%5CNicaraguaWorldCourt2001.pdf
- Sanders, Jerry, "Reaganismo y Economía Mundial", Raíces de la Política Norteamericana hacia Nicaragua, [Managua, Cuadernos de pensamiento propio, 1987]
- Schraeder, Peter, Intervention in the 1980s, [London, Lynne Reinner Publishers, 1989]
- Simma, Bruno, "Counter-measures and dispute settlement: A Plea for a different balance", European Journal of International law, in http://www.ejil.org/journal/Vol5/No1/art8.pdf
- Smith, Michael Joseph, "Liberalism and International Reform", in Nardin, Terry; Mapel, David (eds), Traditions of International Ethics [Cambridge, Cambridge University Press, 1992]
- Sorensen, Theodore C. "The President and the Secretary of State", in Foreign Affairs, Winter 1987/88
- Tomuschat, Christian, "Are counter-measures subject to prior recourse to dispute settlement procedures?", European Journal of International law, in http://www.ejil.org/journal/Vol5/No1/art6.pdf
- Treverton, Gregory F., "Constraints on 'Covert' Paramilitary Action", in Stern, Gary and Halperin, Morton, The U.S. Constitution and the Power to go to War, [Westport Connecticut, Greenwood Press, 1994]

- Valls, Andrew, Ethics in International Affairs, [New York, Rowman and Littlefield Publishers, inc., 2000]
- Viotti, Paul R. and Kauppi, Mark V., International Relations Theory: Realism, Pluralism, Globalism, [New York, Macmillan Publishing Company, 1987]
- Williams, Phil, Goldstein, Donald M., and Shafritz, Jay M. (eds), Classic Readings of International Relations [Belmont CA: Wadsworth Publishing Company, 1994]
- Windsor, Philip, "Superpower Intervention", in Bull, Intervention in World Politics, [London, Oxford University Press, 1984]
- Zárate, Luis Carlos, La no-intervención ante el derecho americano, [Bogotá, Uniandes Ediciones, 1963]
- "Nicaragua: una historia tormentosa", in http://www.nodo50.org/espanica/histonica.html#somozas
- "Los sucesos de Nicaragua y la solidaridad hispanoamericana", in http://www.filosofia.org/hem/dep/rde/re005047.htm
- "The Iran-Contra Affair 20 Years On", in http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB210/index.htm
- Decision of the ICJ of 26 November 1984, Case Concerning Military and Paramilitary Activities in and against Nicaragua, http://www.icj-cij.org/
- Decision of the ICJ of 27 June 1986, Case Concerning Military and Paramilitary Activities in and against Nicaragua, http://www.icj-cij.org/
- Declaration on Principles of International Law, Friendly Relations and Cooperation http://www.hku.edu/law/conlawhk/conlaw/outline/Outline4/2625.htm
- International Law Commission, Fiftieth Session on State Responsibility, in http://untreaty.un.org/ilc/documentation/english/a_cn4_488_add3.pdf
- Definition of Aggression, UN General Assembly Resolution 3314 of 14 December 1974 http://www.un.org/documents/ga/res/29/ares29.htm
- http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf
- http://www.britannica.com/eb/article-233501/international-law
- http://www.unhchr.ch/html/menu3/b/c_coloni.htm
- http://daccessdds.un.org/doc/RESOLUTION/GEN/NR0/218/94/IMG/NR021894.pdf

- http://www.icj-cij.org/icjwww/igeneralinformation/ibleubook.pdf
- http://www.icj-cij.org/icjwww/ibasicdocuments/ibasictext/ibasicstatute.htm
- http://www.iep.utm.edu/i/interven.htm
- http://www.infoplease.com/ipa/A0107489.html
- http://countrystudies.us/el-salvador/85.htm
- http://www.oas.org/juridico/English/charter.html
- http://www.icrc.org/Web/Eng/siteeng0.nsf/html/genevaconventions
- http://www.costarica-net-guide.com/sandinoing.html
- http://lawofnations.blogspot.com/2005/06/reconsidering-reconsideration-of-icj.htmlm
- http://www.law.uchicago.edu/posner-sinsfatherland.html
- http://berclo.net/page01/01en-nicaragua.html